GOOD PUBLIC WORKS MANAGEMENT IN FIRST NATIONS COMMUNITIES

Backgrounder

– Public Works Function in Self Government

Indian and Northern Affairs Canada
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1. INTRODUCTION: PURPOSE AND SCOPE

Peoples of European descent did not establish Canada's earliest forms of government. In fact, prior to the arrival of Europeans, Aboriginal Peoples in Canada had governed themselves for thousands of years. However, in the *Constitutional Act of 1867* (the *British North American Act*), and as a matter of government policy, Aboriginal peoples were excluded from the formation of Canada and had little control over their own interests. In recent years, Canada has seen a re-emergence of First Nations governance as Aboriginal communities increasingly seek jurisdiction, through self-government negotiations, in a number of areas - one of which is public works. This highly complex and technically based function does not often receive the attention it deserves despite its centrality to local governance. Further complicating public works are the numerous overlaps with several other functions including environmental management, health and social programming, and economic development.

The following paper has been designed to provide an overview of the function for federal government negotiators as well as their counterparts in Aboriginal communities to inform their discussions surrounding public works.

Several sections of this paper refer to how the public works function is organized and regulated in municipalities across Canada. These references are not meant to suggest any parallels between the rights and authorities of self-governing First Nations and those granted to municipalities by their respective provincial governments. To equate First Nations with municipalities is erroneous and ignores the unique relationship between First Nations and the federal government. However, there are mutual lessons that can be drawn from municipal governments. Specifically, certain issues such as growing use of public-private partnerships and user fees, problems of technology transfer, increased citizen expectations in service quality and limited resources for staff training are relevant to both Aboriginal and non-Aboriginal communities in Canada.

2. DESCRIPTION OF THE FUNCTION

2.1 Definition

The public works function consists of the planning, design, financing, construction, maintenance, research and related regulatory and redress regimes pertaining to:

- public buildings (government buildings, schools, libraries, etc.)
- roads, bridges and related infrastructure
- systems for providing potable water
- systems for collecting, treating and disposing of sewage
- solid waste collection and disposal
- development of community plans and zoning bylaws
- parks and recreation
- fire suppression and protection
- wharves and harbours
- land management and expropriation
- community electrification and energy management
- worker health and safety

In addition to the above functions, public works also entails, in some instances, the regulation of the construction of private dwellings through appropriate building, fire and other codes. (Appendix A provides a brief yet detailed description of several of these functions.) Public works is increasingly a multi-disciplinary function that demands a background not only in various aspects of engineering but also in finance, project management, contract administration and the law. There is also mounting demand for administrative skills related to accommodations and building management. Ensuring capacity and sustained technical support, especially in small communities, is an increasing challenge.

The regulatory aspect of the function is often underplayed as is the ongoing operations and management of such diverse facilities as a water purification plant and a large school.

2.2 Objectives

Governments want their public works function to accomplish several objectives. Principal among these is to deliver high quality services - such as the provision of potable water and the treatment of sewage, the collection of garbage - at reasonable cost. That said, the function usually is associated with other objectives:

- to preserve the health and safety of its citizens
- to ensure fiscal prudence
- to achieve environmental sustainability
- to provide economic development opportunities
- to enhance cultural expression and pride
- to enhance training opportunities
- to strengthen communities through recreation and voluntary activities.

All of these objectives are central to sound governance. Because the goods and services generated as a result of public works activities are tangible - they can frequently be seen, measured and touched - they then become an expression of the permanence, competence and viability of the community. They are an expression of cultural pride and community strength. Many public works functions bear a direct impact on other government initiatives. For example, if public buildings are built and well-maintained, this facilitates the delivery of social programs and the construction and maintenance of public works facilities leads to numerous economic development opportunities. Thus, it is hard to imagine a government without a public works function.

3. PUBLIC WORKS IN SMALL, NON-ABORIGINAL MUNICIPALITIES

The purpose of this section is to help negotiators understand how some of the above objectives are achieved in non-Aboriginal communities so as to inform the crafting of sound self-government agreements.

3.1 Roles - Provinces & Municipalities

In Canada, regional and municipal governments, hereby described as local governments, are creatures of the provinces. In addition to maintaining the exclusive right to create and disband

municipal corporations, provinces also determine the powers and responsibilities of their constituent municipalities, including their expenditure requirements and revenue capabilities. Municipal leaders do not hold complete authority over their affairs; thus, they often require the approval of a minister or a provincial authority prior to taking action.

The relationship between the provinces and municipalities can generally be described as one between a regulator and operator respectively. Yet it is noteworthy that the rationale for dividing service responsibilities between regional (upper tier) and lower-tier municipalities in several provinces is based more on considerations of economy and efficiency as opposed to concerns over regulation.[1] Appendix B provides a general division of responsibilities between the provincial, regional and local governments.

3.2 Legal Framework

In each province, there is generally a provincial statute governing the principal aspects of municipal authority. Legislation was generally deemed to be preferable over a establishing a series of codes, statutes and charters for each municipality in view of each function. As such, municipalities are legislated under specific corporations of an identical class under general laws. These Acts typically specify the functions municipal government may undertake, the sources of revenue available to them, how and when budget decisions are made, the alteration of municipal boundaries, the composition of municipal councils, and the passing of by-laws, among other functions.

In addition, an assessment act in each province and territory establishes the rules for assessing real property for property taxes (in five of the ten provinces, it is entirely a provincial responsibility). Most provinces have also established boards, commissions, or quasi judicial agencies to oversee many of the functions of municipalities such as approval of capital expenditures, borrowing, planning decisions, and passing of municipal by-laws.

Finally, there are other statutes that affect each of the principal public works functions. The following provides a brief summary of statutory practices for each of the following areas of public works.[2]

I) Building and Safety Codes

Building safety standards are typically found in the provincial Municipal Act or Building Act. The main purposes of these statutes are to sanction the adoption of provincial or national codes (most commonly the National Building Code), to describe the duty of buildings inspectors (and setting forth their power of entry into dwellings), to lay out the process for obtaining building permits and to provide redress for aggrieved citizens. Several provinces have set up bodies — such as the Safety Codes Council of Alberta or Building Standards Board in Manitoba — to advise on

[1] For further information, please consult Institute On Governance, The Public Works Function in Canadian Jurisdictions (RPS for INAC, October 1998). The paper is available on the Institute's website at www.iog.ca

[2] For a more comprehensive examination of the legal and regulatory relationship between provincial governments and municipalities in the areas of public works, see Institute On Governance, The Public Works Function in Canadian Jurisdictions (RPS for INAC, October 1998). The paper is available on the Institute's website at www.iog.ca

standards and hear appeals regarding permits. A separate Fire Prevention Act typically provides for a provincial fire commissioner and the Fire Underwriters Survey (FUS) organizations with the power to investigate fires and set standards for prevention and safety. Most provinces also maintain provisions or separate legislation that demands closure, cleanup or demolition of unsightly property.

2) Water and Sewage

Authority to build and operate water and sewage works typically derives from the provincial Municipal Act. Statutes specifically detailing safety standards take the form of either a Water Resources Act or a section of the *Canadian Environmental Protection Act* (CEPA). The most important provisions pertain to: setting the process of obtaining licenses for building potable water, waste water or sewage works (including the submission of plans to the minister), enumerating the powers of provincial inspectors, and permitting the minister (through an appointed environmental director) to shut down water or sewage works deemed deleterious to public health. Specific potable water standards, along with classes of licenses for water works operators, are found in provincial regulations.

3) Solid Waste

In general, each provincial Municipal Act authorizes — and frequently compels — municipalities to provide for the planning, collection and safe and ultimate disposal of solid waste either by itself or through a contracted organization. In addition, a Waste Management Act or Environmental Protection Act typically reserves wide-sweeping powers to the provincial minister (through regulations) to oversee waste management systems. The most important provincial government powers include: undertaking investigations, appointing inspectors and describing their powers, defining litter, setting regulations, and demanding provincial approval for the operation or enlargement of certain waste disposal sites and systems (e.g. incinerators, hazardous waste).

4) Roads and Bridges

The provincial Municipal Act allows municipal ownership and maintenance of roads, bridges, sidewalks and other street amenities while a separate Highways Act establishes provincial ownership of all other roads. Typically, there is a section outlining that roads must be kept in a "reasonable state of repair". Detailed road building standards and schedules for maintenance are handled by municipal by-law or Lieutenant Governor in Council regulations. Liability for "disrepair" will be handled in the courts. Provision regarding the expropriation of lands for road building are usually found in a separate Expropriation Act.

5) Parks and Recreation

The provincial Municipal Act permits communities to own and maintain recreation and community facilities such as public libraries, museums, art centres, or sporting facilities. All provinces also have a Provincial Parks Act which describes the process of setting up and administering a provincial public park while empowering provincial officials to enforce standards within these areas. These statutes also allow the provincial government to set a variety of

regulations, such as the prohibition of certain activities (logging, mining, etc.), the issuing of licenses (for hunting, fishing, etc.), the setting of user fees, or the use of firearms.

6) Land Use Planning

Each province has enacted a highly detailed Planning Act (except for BC and Alberta, where planning is contained within their Municipal Acts) which sets out the process and required content of community plans for planning advisory bodies (respecting individual municipalities, counties, improvement districts, etc.). Virtually all of these acts establish a consultative process which ensures the right of the public to have access to information and to participate in the formulation of land-use policies. Power is also conferred to individual municipalities regarding zoning, subdivision, and building standards. Finally, provincial planning appeal boards are commonly established for adjudication of disputes.

In summary, despite trends to lessen bureaucratic regulation, provincial legislation granting authority to municipalities remains extremely detailed. It places narrow limits on what municipalities can do and severely restricts the scope of municipalities to initiate policy. Legislation also sets out acceptable sources and conditions of municipal revenue, both in the areas of capital borrowing and user fees.

Provinces maintain detailed standards and professional staff for each of the categories of infrastructure in order to support the creation of new facilities (e.g. waterworks), the upgrading and replacement of outdated or obsolete installations.

3.3 Financing Public Works

Municipalities generally borrow to pay for that part of capital works that are not financed by grants from higher levels of government or through direct user fees. Borrowing is strictly regulated by the provinces. For example, borrowing to pay operating expenditures is forbidden and in all provinces except Prince Edward Island, the provincial minister must approve all capital expenditures. Moreover, the size of municipal debt is limited in two ways: the total long-term debt a municipality may incur and its debt service burden in comparison to gross revenues or expenditures. As a result of these strict controls, municipal governments are the least indebted in Canada.

While useful for larger communities, bond financing is frequently not a viable option for smaller communities as they have more difficulties raising capital through bond ratings as they benefit from lower interest rates. That said, the trend is to rely less and less on borrowing funds, even in large municipalities, which are choosing instead to rely on operating revenues (i.e. user fees) and reserves to finance activities.

3.4 Contemporary Issues and Trends

Large and small municipalities in Canada face similar issues; what differentiates small and rural municipalities is the acuteness of these challenges, many of which are highlighted below.

Access to long-term capital for capital infrastructure is less secure in small municipalities

Since small communities are typically not rated by bond granting agencies, acquisition of debentures at reasonable rates of interest is difficult when acting alone. To offset this problem of debt issuance, a variety of means have been used to access long-term financing, including provincially-backed debentures, bond banks, and (and recently in some provinces) direct lending from chartered banks.

Small municipalities are increasingly forced to be more self-reliant in public works financing

User fees in small and rural communities are now commonplace for water and sewage operations (e.g. yearly household consumption or metered rates), solid waste collection and disposal (e.g. tipping fees) and recreational facilities.

Problems of technology transfer

The difficulty of transferring new technology to assess, build and maintain public works is frequently voiced by municipalities across Canada. Laggardness in implementing new technology in small and rural communities is particularly problematic as is access to those with knowledge and expertise. Since public works staff in these municipalities wear more than one hat, insufficient time prevents individuals from attending training sessions outside the community or to research new technologies and applications. Moreover, since the private sector typically drives changes in public works technology (which are often first introduced in urban centres), smaller municipalities are generally the last to benefit from these innovations.

One of the initiatives presently being pursued by the federal government to address this problem is the creation of a National Technical Guide for Urban Infrastructure. The National Building Code and National Fire Code have greatly assisted the construction industry in Canada by linking research to technology developments and through subsequent diffusion into the industry. The absence of such a code for infrastructure has resulted in considerable variation in technical manuals and contract specifications infrastructure used by various levels of government and the private sector. This has led to a difficulty in predicting life-cycle costs for infrastructure, a lack of sharing of technologies and an inability for manufacturers to introduce new technologies in an orderly manner. The National Technical Guide - designed to provide guidelines on constructed municipal facilities such as bridges, roads, buried utilities, sidewalks, and other urban fixtures - is intended to be published by the year 2004 following several stages of cross-country consultations.

Engineering consultants are commonly required

Since few small communities can sustain the cost of a full-time professional engineer, contracted firms are commonly retained for specific projects or time frames given their expertise in infrastructure design and repair. This arrangement requires transparent contracting procedures and the building of longer term relationships with individuals or companies who will able to understand the unique public works specifications of the community.

Elected council oversight of public works is important

The role of council in small municipalities extends to land use planning, short- and long-term capital planning, tendering, and channeling citizen concerns regarding the state of municipal infrastructure. Evidence suggests that councils' direct involvement in public works management, particularly financial oversight, will continue to grow.

Citizens expectations are growing for improved service quality and planning for public works

Citizens are increasingly demanding greater quality in the delivery of public works and more meaningful forms of political participation. Municipal administrators also caution that governments must better manage these demands and avoid creating undue expectations of service. Building large-scale water or sewage treatment plants is simply not feasible for smaller communities. One manifestation of these mounting demands that citizens are turning toward the legal system in greater numbers to assert their rights. As a result, anecdotal evidence from public works directors suggests that maintaining facilities to codes and standards is increasingly important.

There is no optimal way of administering public works

There is no evidence to suggest that there is one correct way of organizing the administration of public works. Some communities place public works functions in a single department; others place responsibility for streets and sidewalks in a public works department but have a separate water department or sanitation department. The size and growth of the community, the range of public works functions, the complexity of operations and other unique local conditions are typically the most important considerations when administering a public works department.

Small municipalities must be open to joint servicing arrangements with neighbouring communities

The vast majority of small municipalities in Canada share some public works with contiguous communities, special purpose bodies, or regional governments. Inter-municipal agreements obviously provide an effective means to obtain economies of scale such as through the provision of communal services (i.e. - water, sewage, solid waste collection and disposal) and in the development and enforcement of by-laws and regulations.

There is agreement that training for public works managers and staff is needed given the diversity of their responsibilities

Training of public works managers and staff assumes added importance given the diversity of skills commonly required, the increasing use of technology, and the important health and safety considerations of public works functions. For managers, generalist knowledge of administrative and legal affairs is becoming as important as technical understanding of engineering practices.

Standards for financial reporting are evolving to better account for public assets and liabilities

Finally, related to financial management, municipalities are engaged in improved valuation of assets and liabilities. Provincial governments have demanded improved accounting and reporting procedures, which include a common standard for calculating depreciation costs. The Public Sector Accounting and Auditing Board of the Canadian Institute of Chartered Accountants, for example, has made recommendations that the financial statements recognize the liability for closure and post-closure care costs for solid waste disposal sites. Many municipalities have accordingly altered their bookkeeping methods by adopting an accrual basis for accounting.

3.5 Conclusions

The public works function is one which operates in a complex, and layered regulatory environment. *Appendix C - Synopsis of Alberta's provincial statutes pertaining to public works* demonstrates the depth and complexity of applicable legislation that must be taken into account. Alberta has been selected as an example given the depth of the legislation surrounding this function.[1] As well, Alberta has recently concluded a significant municipal reform process.

An examination of the legal and regulatory framework surrounding the public works function reveals that provincial governments continue to play an important role. Provinces set standards, provide redress functions, approve various council decisions and, in some cases, inspect public works. The rationale for dividing service responsibilities between regional (upper-tier) and lower tier municipalities in several provinces is based on considerations of economy and efficiency as opposed to concerns over regulation. The two-tier municipal structure has been used primarily to allow those services supposedly exhibiting economies of scale and significant spill overs to be provided by the regional government, while allowing the lower-tier governments to provide the remaining services and to encourage citizen access and participation in local decisions. However, trends towards municipal consolidation in both Canada and abroad suggest that single tier governments offer the least entangled, most accountable, and most cost-effective means of providing local government services.

4. PUBLIC WORKS IN FIRST NATIONS COMMUNITIES

Drawing upon the context from non-Aboriginal communities, this section aims to provide negotiators with a better understanding of governance issues as they apply to self-government.

4.1 Existing legal framework

The unique legal context of Aboriginal communities on reserve present opportunities, constraints and challenges that differ greatly from non-Aboriginal municipalities. To begin, provincial jurisdiction for legislation relating to the public works function likely does not apply to Indian Lands. Under Section 91 (24) of the Constitutional Act of 1867, jurisdiction for legislating for

[1] A synopsis of provincial legislation is contained in Institute On Governance, A Compendium of Provincial Statutes (RPS for INAC, March 1999). The paper is available on the Institute's website at: www.iog.ca

land reserved for Indians and other land-related issues affecting reserves rests with the federal government. Further, even if some provincial laws do apply to Indian reserves, provincial governments have shown great reluctance in the past to enforce such laws. One reason for this is the future cost obligations (such as the regular monitoring of facilities) to provincial governments. For example, according to regulations of the Ontario Ministry of the Environment, the issuance of Certificates of Approvals obligates the Ministry for regular monitoring of approved facilities. Another reason centers upon the fact that access to facilities on-reserve is sometimes problematic. On the other hand, federal law related to public works is sparse and related mainly to environmental management - for example, the *Canadian Environmental Protection Act* CEPA), the *Fisheries Act*, and the *Transportation of Dangerous Goods Act*.

Section 60 (1) of the *Indian Act* states that the Governor in Council may, upon the request of the band council, grant the band "the right to exercise such control and management over lands in the reserve occupied by the band as the Governor in Council considers desirable." Further, the Indian Act accords by-law making power in some areas to First Nations. Section 80(1) outlines the powers of the band council and states that it may enact by-laws provided that they are not inconsistent with any regulation created by the Governor in Council of the Minister pertaining to the following areas:

(f) the construction of bridges, ditches, fences and other local works

(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone

(h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band

(i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60

(l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies[1]

Federal organizations such as the National Research Council, the Canadian Commission on Building and Fire Codes and the Institute for Research in Construction develop model codes for buildings and residences on-reserve. These codes outline the standards for fire safety, occupancy, building services, structural design, environmental separation, hazardous materials and energy conservation. Although these codes are developed by federal entities, they must be adopted by the authority with the jurisdictional power. It is not likely that First Nations have the delegated authority to adopt such codes, even if they chose to do so.

In order to deal with the regulatory void described above, federal funding agreements with First Nations include as part of their conditions the commitment by the recipient First Nations to meet a series of standards applicable to their facilities.

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[1] Imai, Shin & Donna Hawley, The 1995 Annotated Indian Act, Carswell Thompson Canada Limited, 1994

Environmental protection and assessment is an increasingly important aspect of the overall legislative context. Under federal legislation, any public works project on-reserve would require an environmental assessment. Likewise, applications for provincial funding require a provincial environmental assessment. There are now ongoing attempts to harmonize federal and provincial approaches to environmental assessment, regulation and monitoring. Increasingly, First Nations are embarking on these processes.

4.2 Roles and programs

4.2.1 First Nations

First Nations are key players as they increasingly take ownership of the public works function. This ownership is over a wide range of responsibilities from the provision of political leadership to managing the operation of public works activities.

Some First Nations have developed a community plan, the principal elements of which may include: projections for capital expenses, demographic forecasts, anticipated program needs, zoning plans, revenue projections, financial requirements and projected staff requirements. Well-formulated plans will take into account all public works functions and thus demand input from experts with both technical and managerial experience. First Nations requesting funds for capital and O&M financing of public works outlays must submit a current and approved plan to the negotiating table in order for the request to be considered.

4.2.2 Tribal Council

First Nations Tribal Councils are often the organizing entities driving capacity-building on-reserve. (See section 4.3.) They are able to play an advisory role by coordinating services, resources and expertise on public works for its members.

While not all First Nations are aligned with a Tribal Council, this approach may nonetheless present some interesting opportunities for capacity development. For example, in 1994, representatives of Ontario's First Nations negotiated an agreement with DIAND and PWGSC to take control of its technical and advisory services which were previously operated and controlled by government personnel. As a result, Ontario's First Nations Chiefs transferred the mandate of the Indian Inspection Unit (IIU) to its Tribal Councils to form the Ontario First Nations Technical Services Corporation (OFNTSC). The OFNTSC, a non-profit corporation, currently provides professional technical advisory services to unaffiliated First Nations in Ontario and is a strong example of increasing Aboriginal participation in public works. The corporation provides: Architectural Support Services, Housing Inspections, Housing Policy and Programs, Capital Project Planning and Development, Quality Assurance, Training, Operation and Maintenance (O&M), Fire Safety and Protection, and the Circuit Rider Training Program. Members of the OFNTSC can submit an official request to seek the corporation's involvement in various projects throughout Ontario.[1]

[1] For more information on the OFNTSC, consult the following website: www.ofntsc.org

4.2.3 DIAND

In the context of public works, DIAND's primary role is as a funding agency. It is estimated that the asset replacement value in the over 600 First Nations reserves in Canada amounts to approximately $713 for buildings and infrastructure and an additional $7B for housing stock. Capital expenditures and O&M currently averages $700M per year. Over eighty per cent of DIAND's program expenditures are for basic services which are provided to other Canadians by provincial, territorial and municipal governments.

DIAND has the following major programs:

Capital Facilities and Maintenance Program

The Capital Facilities and Maintenance Program supports DIAND's strategic objective to assist First Nations in building healthy, sustainable communities. The program provides funding to assist First Nations to acquire, construct, operate and maintain basic community facilities and services for the following public works functions: water and sewage, roads and bridges, fire protection and suppression services, electric power supply and distribution systems, school site development, operations and maintenance.

The program also outlines the level of service standard DIAND is prepared to financially support to assist First Nations in providing community services comparable to levels of service that would generally be available in non-native communities of similar size and circumstance. Subject to the availability of funds and departmental priorities, DIAND provides funding assistance to First Nations for the functions outlined above, where RPS for INAC provides knowledge and advice to DIAND. All program funding is subject to the approval of a plan.

Capital Facilities and Community Services Program

The Capital Facilities and Community Services Program is the departmental funding mechanism used for the implementation of capital projects and community services on reserve. It oversees the following activities: evaluation of capital projects under contribution arrangements; rental of facilities for federal and band operated schools; capital funding (capital planning), level of service standards and management of teacherages on reserve; and, capital facilities and community services.

Funds for the services listed above are subject to community need as well as the size, value and complexity of the proposed project. Funds are distributed through contribution arrangements, flexible transfer payments and alternative funding arrangements.

On Reserve Housing Program

The new federal on-reserve housing policy introduced structural reforms in July 1996 with the objectives of protecting and extending the life of existing housing; constructing quality, affordable new housing designed to respond to the variety of needs within the community; supporting individual pride and responsibility; and, linking housing activities to training, job creation and business development. Participating First Nations develop community-based housing programs

and multi-year plans, which act as tools to coordinate resources, measure progress, foster accountability to the community as well as serve as the basis for federal funding. First Nations will continue to operate under the former policy regime until such time as they meet the requirements of the on-reserve housing policy.

For further information, please refer to Appendix D - Summary of DIAND Programs.

4.2.4 RPS for INAC

Real Property Services for Indian and Northern Affairs (RPS for INAC) has essentially two main roles. The first, program delivery and support, involves the delivery of knowledge and advice for DIAND. The second is to provide accommodation, tenant and real estate services directly to DIAND. These services are primarily, but not exclusively, delivered to departmental staff.

As an increasing number of public works responsibilities are devolved to First Nations communities, the relationship between DIAND and RPS has changed. "While most of the RPS activity in the past involved the management of capital projects and operations and maintenance services and advice directly to FN, the future roles of RPS involve limited direct contact with First Nations and include a myriad of services around the areas of governance, accountability, audit and evaluation, data management, environmental stewardship, nation building, claim settlement and self government.[1] Thus, over the past number of years, the role of RPS has evolved from that of on-site expert and implementer to strategic thinker, coordinator and facilitator.

4.2.5 Other federal departments and agencies

The following provides a sample of some of federal programs and activities outside DIAND aimed at strengthening the public works function for First Nations:

Canadian Mortgage and Housing Corporation (CMHC):

- Drafted the Section 95 Housing Program for on-reserve housing. Also manages the Housing Internship Initiative for First Nations and Inuit Youth, a two-year employment initiative to provide work experience and training to assist youth to pursue long-term employment in the housing industry.

Health Canada:

- Sets out the Guidelines for Canadian Drinking Water Quality along with the health and environment ministries of the provinces and territories under the auspices of the Federal Provincial Sub-Committee on Drinking Water.

Human Resources Development Canada:

- At the request of the Chief, Band Council or other designate, the Labour Branch at HRDC provides fire protection engineering and inspection services for major public band buildings in

[1] Department of Indian Affairs and Northern Development -Client Profile

First Nations communities. These services enable communities to protect, conserve and minimize risks to life and property. Services range from preventing, detecting, containing and extinguishing fires, and alerting people to a fire.

- As part of the Human Resource Development Strategy, the Regional Bilateral Agreement with First Nations set objectives for human resource development so First Nations communities can design and deliver local labour programs and human development services to meet their needs. The agreement also aims to strengthen capacity for community-based decision-making and accountability. Under the Youth Employment Strategy, $5.2 million is administered by the Assembly of First Nations to address youth issues on-reserve. HRDC also manages the Aboriginal Strategic Initiatives Program to strengthen labour-market training, transitions between welfare and work, social services and education.

4.2.6 Provinces

Unlike the case of small non-Aboriginal municipalities, provinces play a limited role with respect to the public works function in Aboriginal communities. The role of the provinces tends to vary, depending on whether or not the community has chosen to adopt provincial codes and standards for the public works function. Some provinces provide assistance in the event of environmental emergencies as well as certification programs. Provincial interests do come into play when there are potential spill over effects of the public works function on provincial lands. For instance, if a sewage outsell runs into provincial water bodies, then appropriate environmental regulations typically apply.

4.2.7 Municipalities

Some Canadian non-Aboriginal municipalities are engaged in service contracts with First Nations to provide such services as fire protection, solid waste management and road maintenance. For many communities, this represents a cost-effective solution to ensure public works services on-reserve.

4.3 Building Capacity

Capacity is the ability of individuals and organizations to perform functions efficiently, effectively and sustainably. Effective approaches to build capacity all share an ethic of creating self-sufficiency and often require a coordinated effort among involved stakeholders. In addition to strengthening service delivery, capacity building must also strive to support broader governance functions such as improved accountability, transparency, citizen participation and involvement, as well as planning and evaluation.

Some current initiatives relevant to the public works function are described below:

Briefings and courses

The federal government, in cooperation with First Nations, has developed several measures to strengthen governance capacity for public works. For example as part of its technology transfer initiative, RPS for INAC offers briefings and courses designed to increase the awareness of

middle managers, Chiefs, Councillors and Band Managers about their responsibilities with respect to the public works function.

Minimum standards as set by other government sources

Several provincial governments are setting mandatory levels of service or minimum standards in many areas of municipal infrastructure. For example, most provinces are setting a mandatory requirement that all water and sewage treatment plant operators be certified for the type of plant that they operate. To do this, provinces are required to offer courses in operations of water and wastewater facilities. Some First Nations with central water and sewer systems have taken advantage of such courses.

Circuit Rider concept

A circuit rider trainer is a professional who will make periodic visits to the community to provide expert, hands-on service on-reserve. Other functions may include providing advice on capital and management plans, consulting on training and personnel issues and evaluation. Ideally, the costs for the circuit rider can be divided among several communities and visits can be scheduled to suit the needs of each community.

Awareness training

DIAND headquarters has developed a briefing package to encourage the support of Band Councils and Tribal Councils for O&M issues. There is also a three-day briefing for technical staff focusing on the principles of good O&M practice.

5. PUBLIC WORKS IN THE CONTEXT OF SELF-GOVERNMENT

From a governance perspective, this function presents challenges for a variety of reasons:

- the wide range of activities including some which are project management oriented (e.g. the planning, construction and financing of a school); some which are regulatory in nature (e.g. the application of building codes); and others which are operational (e.g. running and maintaining a sewage disposal system);
- the highly technical nature of the function, involving a number of professional disciplines;
- the potential for some activities to have "spillover" affects on adjacent jurisdictions;
- the importance of having this function tied closely to other related activities of government - housing, economic development, environmental management to name a few;
- the fact that some activities bring specific benefits to individuals (e.g. the provision of potable water), thus lending themselves to user fee approaches while other have benefits that are more generalized (e.g. the provision and maintenance of public buildings) and consequently need to be financed from general revenues;
- the high costs associated with financing public works facilities and the difficulty of smaller communities in obtaining sufficient and affordable debt financing;
- the likelihood that scale from an efficiency point of view matters and that the implications will not be uniform across the function, i.e. some activities can be done efficiently at the

community level (e.g. garbage collection), others may require a much larger scale (e.g. the development of building codes); and finally,

- the impact that the function has on the daily lives of each individual or family in the jurisdiction, suggesting the importance of local preferences.

An important issue that negotiators will need to examine carefully is how best to structure the regulatory-type functions embedded in a public works regime - that is, regulatory regimes relating to construction, fire prevention, zoning, water quality, sewage and solid waste disposal among others. In many of these areas, the Aboriginal government will have both operating and regulatory responsibilities - for example, it builds and operates sewage systems and is responsible for regulating them to ensure certain environmental and health standards are adhered to. A potential problem - and one hardly unique to Aboriginal governments - is how does a government regulate itself.

One manifestation of this problem is the potential for what experts in administrative law refer to as "institutional bias" - that is, where positions within an organization are in conflict. The most obvious example of institutional bias occurs when a single entity acts as both "prosecutor" and "judge". This is reflected in a growing jurisprudence involving cases in the securities industry, professional organizations with certification powers and agencies regulating the purchase and use of alcohol. One of the key issues in these cases is the extent to which one entity can both investigate behaviour and then make judgements about withdrawing licences or other types of certification.

In the case of public works in the context of Aboriginal self-government, the reverse side of the coin might present itself: instead of "overzealous" pursuit of the law, there is the potential for under enforcement through discouraging rigorous inspections, cutting budgets or appointing "soft" regulators.

This problem may be especially acute in governments that are relatively small. Unfortunately, there appears to be little jurisprudence bearing on this type of institutional bias, jurisprudence which might be helpful in the design of Aboriginal governments.

Aboriginal governments with a two-tier structure might be able to avoid this potential problem by separating the regulatory from the operating powers by assigning each to different tiers. For single tier governments, the inspection functions might be contracted to an organization independent of the Aboriginal government with obligations to make results of its investigations public.

There may be other solutions as well. Negotiators will need to discuss with their counterparts the best way to avoid potential problems of institutional bias.

6. CONCLUSIONS

There are three main conclusions that can be drawn from this analysis. The first conclusion is that the public works function is fundamental to effective self-government and is more complex than it appears. Thus, it likely deserves careful treatment in self-government agreements. The second

conclusion is that the regulatory nature of many public works functions is one of the principal reasons for this complexity. It is not clear how this regulatory aspect will work in a single-tier government. The third and final conclusion is that building capacity for a modern public works function will likely be a major challenge for a First Nations government. This suggests a continuing relationship with the federal government for some time to come.

APPENDIX A
Basic Descriptions of Public Works Functions

WATER SUPPLY

Objective:

- to supply safe drinking water

Key activities:

- Application of the national drinking water guidelines
- Exercising good practices in the following activities:
    - Planning, design and inspections of construction sites
    - Operation and preventive maintenance of a water supply system
- Inspection, enforcement, penalties, redress
- Training and certification of staff and water facilities
- Public awareness
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Emergency response section
- Regulation unit
- Public education unit/capability

Indicators of success:

- State of readiness and response times
- Reduced health risks (focusing on prevention measures from diseases outbreaks)
- Continued supply of safe drinking water to the public
- Assurance of adequate volume of water for fire fighting capabilities
- Public awareness on potential health risks (if water not safe, notify public about needs for boiling of water), on water conservation measures and other
- General knowledge of water data (i.e. levels of water consumption, costs, etc.)

Existing key federal regulations (and originating agency):

- National Fire Code
- National Building Code
- The latest edition of the Canadian Drinking Water Guidelines by Health Canada

WASTEWATER COLLECTION, TREATMENT AND FINAL DISPOSAL

Objective:

- To collect, treat and final safe disposal of wastewater

Key activities:

- Application of the national wastewater treatment and effluent quality guidelines
- Exercising good practices in the following activities:
    - planning, design and inspections of construction sites
    - operation and preventive maintenance of a wastewater system
- Inspection, enforcement, penalties, redress
- Training and certification of staff and wastewater facilities
- Public awareness
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Emergency response section
- Regulation unit
- Public education unit/capability

Indicators of success:

- State of readiness and response times
- Reduced health risks by safe disposal of treated wastewater
- Provide continuous wastewater service to the public
- Public awareness on potential health risks related to unsafe practices re. wastewater system and on wastewater conservation measures (i.e. low-flushed toilets, re-use of grey wastewater and other)
- General knowledge of wastewater data (i.e. type of a treatment system, testing results, upgrades to collection and treatment systems, etc.)

Existing key federal regulations (and originating agency):

- National Fire Code
- National Building Code
- The latest edition of the Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments by Environment Canada

ROADS & BRIDGES

Objective:

- To construct and maintain roads and bridges to a level to allow safe and efficient mobility within and into a community

Key activities:

- Development (or adoption) and maintenance of design (optional) and maintenance standards[1]
- Construction (optional), reconstruction, maintenance and inspection of roads and bridges
- Setting up and using a maintenance management system
- Development (or adoption) of bylaws[2]
- Enforcement of bylaws and setting penalties (e.g. bridge load restrictions)
- Training and certification of maintenance staff (e.g. equipment operators)
- Negotiating and maintaining MTA's (optional)
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Road maintenance unit
- Maintenance equipment yard and housing
- Regulation unit[2]

Indicators of success:

- Roads and bridges in good and safe condition
- Community satisfaction

Existing key federal regulations (and originating agency):

- Roads and bridges are generally a provincial responsibility
- Roads Design Standards: Transportation Association of Canada "Geometric Design Guide for Canadian Roads" (Provinces usually have their own standards)
- Bridge Design Standards CAN/CSA S6-88 "Design of Highway Bridges"
- Indian Reserve Traffic Regulations (C.R.C., c.959) govern the operation of vehicles within Indian Reserves (available at http://canada.justice.gc.ca/FTP/EN/Regs/Chap/I/1-5/CRC959.txt)
- Off reserve roads and bridges which receive funding assistance may have to conform to the higher standards of the responsible provincial, territorial, regional, or municipal transportation authority providing funding assistance.

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[1] design and maintenance standards are frequently provincial/territorial
[2] this should probably be covered under the policing function together with traffic and vehicle operation

WORKER HEALTH AND SAFETY

Objective:

- To ensure the protection of the health and safety of First Nations employees and employees of other organizations active in the Nation through the provision of healthy workplaces; preventative training; the availability and application of policies, standards, guidelines and inspection; and that hazards are identified, addressed and reported.

Key activities:

- Establishing and maintaining a health and safety function (organization, committee, coordinator)
- Establishing policies, directives, standards, measures and procedures and the exercise of related authorities. This includes the delineation of responsibilities of employers and employees and procedures for dealing with critical incidents.
- Delivering or arranging the delivery of worker awareness and training and information campaigns
- Inspecting of workplaces by qualified persons and identifying and ensuring compliance as to the correction of unsafe conditions
- Investigating and reporting of accidents, occupational diseases and other hazardous occurrences
- Maintaining health and safety records
- Providing personal protective equipment and first aid services for employees
- Ensuring health and safety provisions in procurement and contracting processes
- Periodically evaluating the health and safety function
- Administering accident/injury compensation claims

Organizational implications:

- Requires leadership by elected community representatives
- Requires an effective health and safety organization or coordinator with and accountability regime and enforcement authority
- Requires an extensive set or policies, standards and guidelines, and a training regime
- Requires commitment to training and awareness (extensive courses available)

Indicators of success:

- Results of inspections of workplace safety conditions
- Number and nature of hazardous occurrences
- Employer/employee awareness of health and safety procedures

Existing key federal regulations:

- Canada Labour Code Part 2
- Various policies, standards and guidelines are available from Treasury Board and PWGSC

SOLID WASTE MANAGEMENT

Objective:

- To collect and provide safe and controlled disposal of solid waste

Key activities:

- Application of the national guidelines for solid waste disposal
- Planning of solid waste disposal management method (collection and disposal)
- Providing that a community is going to build a solid waste disposal site, exercising good practices in the following activities:
    - planning, design and inspections of construction solid waste site
    - operation and preventive maintenance of a wastewater system
- If a community is going to collect and transfer the solid waste to a neighboring community, exercise good practices in planning of delivery methods to that site (through a transfer station or direct disposal)
- Inspection, enforcement, penalties, redress
- Training and certification of staff and solid waste facilities
- Public awareness on environmental friendly measures such as: recycling, re-use, reduce of solid waste
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Emergency response section
- Regulation unit
- Public education unit/capability

Indicators of success:

- State of readiness and response times
- Reduced health risks by controlled waste collection and disposal methods
- Provide continuous solid waste services to the public
- Public awareness on potential health risks (potentials of: fires, leakages etc.)
- General knowledge on solid waste management methods (i.e. collection days, type of waste that can be recyclable, and other)

Existing key federal regulations and originating agency):

- National Fire Code
- National Building Code
- The latest edition of the Guidance Manual for Solid Waste Landfills at Federal Facilities by Environment Canada

FIRE PROTECTION (excludes other emergency measures)

[Fire protection as a public works function, in the FN context, may be considered to have two components: **pure fire suppression** (fire truck and equipment) and **infrastructure** (water supply and hydrants)]

Objective:

- To protect life and property from fire

Key activities:

- Development (or adoption) and maintenance of a fire code and bylaws
- Three levels of inspection, (residents, fire department, and HRDC)
- Coordinate HRDC periodic inspections of existing buildings, engineering drawing reviews, and inspections of major public band buildings under construction
- Enforcement, penalties, redress*
- Training and certification of fire department staff
- Fire suppression
- Community education
- Equipment acquisition, maintenance and inventory control
- Ensure the community water system is suitable for fire suppression purposes by liaising with the person responsible for maintaining the water distribution system (maintaining fire pumps, hydrants etc.)

Organizational implications:

- Fire fighting unit
- Regulation capability
- Fire prevention community education capability
- Negotiating and maintaining MTA's {for suppression function} (optional)

Indicators of success:

- State of fire readiness and response times
- Reduced fire losses (life, injury, property)
- Community awareness

Existing key federal regulations (and originating agency):

- National Fire Code, National Research Council of Canada
- National Building Code, National Research Council of Canada

* where a FN building houses federal employees it must be inspected in accordance with the Canada Labour Code

COMMUNITY PLANNING

Object:

- To organize and control community land use and development
- To address current land use and community development problems
- To provide for orderly community growth and development
- To contribute to community health, well-being and convenience
- To avoid/address environmental problems
- To provide basis for community capital development program
- To support economic and cultural development
- To provide for community involvement in community affairs

Key activities:

- Development and maintenance of a community plan
- Process of public consultation
- Development of zoning bylaw
- Land use regulation and administration
- Subdivision planning
- Site planning associated with physical developments

Organizational implications:

- Requires leadership by elected community representatives
- Initial role for planning coordinator
- Means to effect ongoing land administration function (community official)

Indicators of success:

- Support of plan by community leaders and people
- Effective land administration
- Addressing needs of current and future populations (e.g. land availability for housing)
- Coordinated, effective and efficient capital development program
- Ecological integrity
- Community integrity and pride

Existing key federal regulations (and originating agency):

- Not applicable
- Provincial/territorial planning act and guidelines can provide guidance
- Guidelines available from DIAND

PARKS AND RECREATION

Objective:

- To provide for active and passive community recreational opportunities suitable to community needs
- To provide a degree of protection for selected land and water areas in the community of FN area of jurisdiction

Key activities:

- Determine community needs and interests (can be done through community plan)
- Assess community land base for suitable resources
- Identify community needs and goals through community consultation
- Identify and acquire land
- Identify in capital development program
- Design/develop facilities and recreational features
- Develop and implement recreational programs
- Possibly relate to economic development goals and activities

Organizational indicators:

- Need recreation coordinator and volunteers
- Facilities, equipment and lands will require maintenance

Indicators of success:

- Recreation and open space supported in community plan and zoning bylaw
- Facilities, programs available and actively used
- Open space protected and available for passive recreation
- Maintained facilities and equipment available for public use

Existing key federal regulations:

- Not applicable
- Guidelines available from DIAND and provinces
- Facility standards available from sports sanctioning bodies and other sources

BUILDINGS

(including residential, institutional, industrial, agricultural, community/public and commercial)

Object:

- Provide appropriate shelter and habitable space for living and carrying out the functions necessary to maintain a viable and safe community

Key activities:

- Coordinating client needs into functional programs for building projects
- Interpretation of municipal bylaws and zoning regulations, related to project development
- Preparation of project schedules and budgets
- Hiring design consultants to complete detailed designs and prepare contract documents
- Review of detailed designs for compliance with building codes/standards and municipal regulations
- Coordination of special needs and services (energy conservation, etc.) into projects as required
- Preparation of project status reports and presentations to clients
- Review detailed designs for compliance with client needs
- Coordination of tendering process for construction of projects
- Periodic construction project inspections and verification of work completed
- Completion of Interim and Substantial Completion inspections
- Coordination of furniture and space fit up with consultants and clients
- Coordination of Building Commissioning activities
- Coordination of project documentation (as built drawings, warranties, equipment brochures, etc.) for building operational staff
- Review of building O & M strategies with building construction contractors and future operators
- Verification of municipal requirements for occupancy of building after construction

Organizational implications:

- Architectural, mechanical and electrical expertise needed
- Access to technical staff for document reviews and distribution
- Link to contracting/tendering organizations
- Link to decision making authorities, especially for major budget and planning decisions

Indicators of success:

- Community needs are recognized and realistically planned into an ongoing implementation schedule

*Existing key federal Codes and Regulations**

- National Building Code
- National Fire Code
- Canadian Electrical Code

- ASHRAE Standards
- Canadian Labour Code
- CAN/CSA- B651-M90 Barrier Free Design
- Canadian Environmental Protection Act

* Depending on the type of building and its uses, a variety of federal regulations may apply, i.e.. Heritage Conservation, Fisheries Act, etc. It is incumbent on the project authority to identify all of the jurisdictions that require attention for project completion.

APPENDIX B

General Division of Responsibilities Over Public Works Functions

	Provincial Role	Regional Government Role	Lower-Tier Municipal Role
Land Use	Enabling legislation (Planning Act) Advice to municipalities on land use planning Final approval of Official Plans and oversight of zoning by-laws Adjudication of disputes over official plans or by-law	Power to appoint planning advisory committee Development and adoption of Official Plan	Adoption and implementation of zoning by-laws
Building Codes	Formulation of building codes (5 provinces) Enabling legislation (Building Code Act) Appeals procedure	(limited)	Appointment of inspectors Site plan approval Issuing building permits
Roads and Bridges	Enabling legislation (e.g. Highway Traffic Act) Setting and monitoring of minimum standards (construction and safety) Construction and maintenance of provincial (inter-city) roads	Construction and maintenance of arterial roads Consult with province on legislation and regulations Monitor effectiveness of standards (with province)	Construction and maintenance of local roads
Parks and Recreation	Enabling legislation (Municipal Act or Public Parks Act)	(limited)	By-law establishing park or recreational facility Delegation of management to park Board
Water and Sewage Systems	Enabling legislation (Municipal Act) Review of waterworks plans Review of utility rates and provision for appeals process Establishment of water quality standards (Water Resources Act)	Establishment and operation of water utilities Expropriation powers over land and water sources Inspection of water system	(Usually limited to local distribution, billings and customer relations)
Solid Waste Management	Enabling legislation Setting of health standards	Choice and management of disposal site Inspection of sites	Solid waste collection

APPENDIX C

Synopsis of Alberta's provincial statutes pertaining to public works

Building and Safety Codes

Safety Codes Act (RSA 1980 S-0.5)

- S. 61 - permits The Lieutenant Governor in Council to set regulations "governing fire protection and the safe design, manufacture, construction, sale, installation, use, operation, occupancy and maintenance of:
  - i) buildings,
  - ii) electrical devices,
  - iii) elevating devices,
  - iv) gas systems,
  - v) plumbing or private sewage disposal systems,
  - vi) pressure equipment,
  - vii) fire protection systems and equipment"
- S.29 - provides for the appointment of inspectors
- S. 30 - Safety code officer may enter dwelling without warrant (except for private dwelling-place which requires consent of owner or warrant from a justice)
- S. 21 -permits fees by the levy on assessments on persons who apply for, or hold, certificates or permits or who apply to register designs
- S. 63 & 64 - defines penalties & offences, which include interfering with a safety code officer, making a false or misleading statement, or failing to submit pertinent information
  - first offence penalty is not more than $15,000 (and not more than $1000 day for each day in case of continuing offence) and/or imprisonment for a term not exceeding 6 months
  - 2nd or subsequent offence: $30,000 and $2000 per day for continuing offence and/or imprisonment for 12 months max.
- Part 2 - establishes Safety Codes Council; responsibilities of Council include:
  - hearing appeal of orders from inspectors;
  - promote uniformity of safety standards for any thing, process or activity to which the Act applies;
  - may review and formulate classifications of certificates of competency and qualifications required of a person to hold a certificate of competency;
  - with the consent of the Minister, may review and formulate codes and standards for accreditation and safety standards for any thing, process or activity to which the Act applies;
  - may undertake to provide the Minister with advice on safety information, education programs and services, accreditation and other matters related to this Act

Building Code Regulation, AR 50/98

- provides that the Alberta Building Code 1997, as established by the Safety Codes Council and published by the National Research Council of Canada, is declared in force in respect of buildings

Alberta Fire Code, 1992, AR 204/92, 52/98

- declares that the Alberta Fire Code, 1997, as established by the Safety Codes Council and published by the National Research Council of Canada, is declared in force in respect of fire protection

Electrical Code Regulation, AR 215/97

- declares that the code in force in respect of electrical systems is the Canadian Electrical Code, part 1, Seventeenth Edition, CSA Standard C-22.1-1994. The Electrical Code Regulation also provides for some amendments to that Code

Water and Sewage

Environmental Protection and Enhancement Act (1992 E-13.3)

Part 7 - relates to potable water

- S. 146 - the Minister may make regulations inter alia a) prescribing substances providing for the establishment of specified concentrations for those substances in potable water; b) prescribing methods for determining the concentration of a substance in potable water; c) governing the design, construction, maintenance or operation of i) any type of waterworks system or part of a system, or ii) an equipment, device or apparatus used in connection with any type of waterworks system; d) governing the purity of potable water; e) governing and prohibiting the manufacture, sale or use of any equipment, process, chemical, substance or thing to be used in the treatment or disinfection of potable water
- Director (as designated by the Minister) may issue an environmental protection order to the person responsible for a waterworks system deemed unfit for intended use; this order may order the person responsible for the waterworks system to:
  i) construct, improve, extend or enlarge the waterworks system;
  ii) to operate or maintain the system according to terms and conditions set by the Director;
  iii) take any other action the Director considers necessary to protect or restore the quality of the potable water;
  iv) report on any matter relating to the construction or operation of the waterworks system;
  v) take emergency measures when any potable water supplied by a waterworks system may cause, is causing or has caused an immediate and significant adverse effect on human life or health

Water Resources Act (RSA 1980, W-S)

- S. 71 - sets outs what Lieutenant Governor in Council may regulate (34 areas), including:
  - governing the inspections of works and the investigation of complaints
  - respecting the fees or charges to be paid in respect of any application and for licenses issues under this Act
  - governing the water rates that may be charged by licensees, and the publication of tariffs and rates
- S. 29, 42-45 - explains inspection process and costs associated (borne by the licensee)
- S. 59-63 - deals with penalties, including obstructing inspecting officers, refusing to carry out orders, or discrimination between users of water

Potable Water Regulations (pursuant to RSA E-13.3, 1992), AR, 122/93

- S. 6 - potable water must meet health related concentration limits for substances listed in the latest edition of *Guidelines for Canadian Drinking Water Quality*, published by Health Canada; or any additional or other limits established by the Director
- S. 7 - waterworks systems must meet at least minimum potable water treatment requirements set out in the latest edition of *Standards and Guidelines for Municipal Waterworks and Storm Drainage Systems* published by the department
- S. 16-17 - establishes certification procedures for waterworks operators; classification set out in *Water and Wastewater Operator's Certification Guidelines* published by the department
- S.19 - sets out timelines and procedures for sampling and testing of water supply
- defines "approved analytical methods" as conforming to latest edition of *Standard Method for the Examination of Water and Wastewater* published by the American Public Health Association, et al.; or the last edition of *Methods Manual for Chemical Analysis of Water and Wastes* by the Alberta Environmental Centre

Wastewater Storm and Drainage Regulations, AR 119/93 & 120/93

- S. 5 - drainage standards set out in Standards and Guidelines for Municipal Waterworks and Storm Drainage Systems published by the department
- defines "approved analytical methods" of inspection as conforming to latest edition of *Standard Method for the Examination of Water and Wastewater* published by the American Public Health Association, et al.; or the last edition of *Methods Manual for Chemical Analysis of Water and Wastes* by the Alberta Environmental Centre
- S. 10 - contravention of specified regulations result in $50,000 for individuals and $500,000 for corporations

Water Well Regulations, AR 123/93 & 252/93

- sets out construction & certification requirements

Solid Waste

Environmental Protection and Enhancement Act (1992 E-13.3)

Part 9 - defines waste (e.g. rubbish, paper, packaging, containers bottles, cans, etc.)

- S. 178 - The Lieutenant Governor in Council may make regulations
  a) designating anything as waste;
  b) respecting the provision of waste collection containers;
  c) respecting the collection, storage, treatment, or disposal of waste on, into or under land, water or ice;
  d) respecting the procedure relating to requests for review of environmental protection to clean up unsightly property;
  e) respecting the design, location, establishment, construction, operation, and reclamation of waste management facilities;
  f) exempting any person from the application of all or any of the provision of this Division or the regulations under the Division.

- S. 174(1) - If an inspector or investigator considers any property when viewed from a highway to be unsightly property, the inspector or investigator may issue an environmental protection order to clean the unsightly property.
- S. 175(1) - establishes liability of local authority or property owner for costs of cleaning up.
- S. 185-199 - governs investigations and inspections (e.g. applications for investigations, right of entry and inspection, seizure without order or search warrant)
- S. 200-211 - deals with enforcement and civil remedies
- S. 212-225 - sets out offences and penalties
- S. 168 - provides for the establishment of a management board or other body, whether as a corporation or otherwise, for any purpose in connection with a regulation under this section

Waste Control Regulation, AR 129/93 & 192/96
- addresses hazardous waste, hazardous recyclables, and non-hazardous waste
- S. 15 - sets standards for landfills
- S. 40 - contravention of specified regulations result in $50,000 for individuals and $500,000 for corporations

Roads and Bridges

Municipal Government Act (1994 M-26.1)
Part 3, Division 2 - deals with the regulation of roads and sets out who holds title to roads within a municipality;
- S.2 - establishes responsibility of Highway Authority, which is responsible for the construction and maintenance of all highways subject to its direction, control and management
- S. 532 - declares that roads must be kept in "reasonable states of repair"

Public Highways Development Act (RSA 1980 P-28)
- Invests power to the Minister of Transportation and Utilities to set standards through regulations for the construction and maintenance of public highways.
- S. 19-22 - deals with Ministerial control over other highways, which overlap with access to roads otherwise under municipal jurisdiction.
- S. 34-37 - deal with Controlled Streets and provide for the council of an urban municipality to make by-laws to regulate controlled streets.
- S. 39 - sets out provisions for drainage of highways
- S. 38 - sets out circumstances of Crown liability for poor maintenance of roads

Highways Traffic Act (R. S. A. 1980 H-7)
- Sets out the procedure to expropriate land.
- S.7 (b) declares when a municipality expropriates land, it is the approving authority in respect of an expropriation;
- Part 1 sets out the Procedure for Expropriation;
- Part 2 sets out the Procedure for compensation;

- Part 3 is a general section that includes authorizing the Lieutenant Governor in Council to make any orders and regulations he considers necessary to effect the intent of the Act.

Parks and Recreation

Provincial Parks Act (RSA 1980 P-22)
- establishes process and purpose of setting up provincial park [S. 1 1]
- Minister may, in respect of parks and recreation areas, make regulations governing
  a) establishment and use of reservoirs;
  b) controlling domestic or other animals;
  c) the use of firearms or other explosives;
  d) the use of land and activities on that land;
  e) commercial, scientific, and research activities that may be carried on;
  f) the use of motor vehicles, off-highway vehicles, boats, trailers and equipment;
  g) standards respecting the provision or utilization of services in respect of the public;
  h) standards respecting buildings;
  i) setting, use and extinguishing of fires;
  j) treatment and feeding of wildlife;
  k) dressing or hanging of big game;
  l) issuing of permits allowing special activities to be carried on;
  m) controlling or prohibiting noise;
  n) removal, storage and disposal of motor vehicles, aircraft, boats, trailers, articles or objects;
  o) tenders or proposals made by persons wishing to carry on commercial activities;
  p) governing fees payable

Recreation Development Act (RSA 1980 R-8)
- defines the functions and powers of the applicable Minister in promoting, encouraging and coordinating orderly recreation development in Alberta
- the Minister may appoint boards or commissions to carry out duties prescribed by the Minister

Recreation, Parks and Wildlife Foundation Act (RSA 1980 R-9)
- establishes Foundation to provide to persons and organizations the opportunity to donate real or personal property to the Foundation to be used for a) development or maintenance of recreational programs, facilities, and services; b) development or maintenance of parks; c) management, conservation or preservation of fish and wildlife.

Land Use Planning

Municipal Government Act, RSA 1980 M-26.1
Part 17 - deals specifically with Planning and Development.
- Division 1 - Authorizations, Compensation
- Division 2 - Land Use Policies
- Division 3 - Planning Authorities

- Division 4 - Statutory Plans (includes Intermunicipal Development Plans, Municipal Development Plans, Area Structure Plans, Area Redevelopment Plans)
- Division 5 - Land Use
- Division 6 - Development Levies and Conditions
- Division 7 - Subdivision of Land
- Division 8 - Reserve Land, Land for Roads and Utilities
- Division 9 - Use and Disposal of Reserve Land
- Division 10 - Subdivision and Development Appeals
- Division 11 - Intermunicipal Disputes
- Division 12 - Bylaws, Regulations
- Division 13 - Transitional

APPENDIX D

Summary of DIAND Programs

Capital Facilities and Maintenance Program

The Capital Facilities and Maintenance Program supports DIAND's strategic objective to assist First Nations in building healthy, sustainable communities. The program provides funding to assist First Nations to acquire, construct, operate and maintain basic community facilities and services for the following public works functions:

- water and sewage
- roads and bridges
- fire protection services
- electric power supply and distribution systems
- school site development
- operations and maintenance

The program also outlines the level of service standard DIAND is prepared to financially support to assist First Nations in providing community services comparable to levels of service that would generally be available in non-native communities of similar size and circumstance. Subject to the availability of funds and departmental priorities, DIAND provides funding assistance to First Nations for the functions outlined above, where RPS for INAC provides knowledge and advice to DIAND. All program funding is subject to the approval of a plan.

Roughly forty-five per cent of the capital budget is targeted to the operation and maintenance of existing infrastructure and facilities; the remainder is allocated for the construction or acquisition of capital assets (mainly consisting of water systems, sewage systems and schools). Over ninety percent of the capital budget is administered by First Nations. First Nations are also responsible for managing capital projects, providing technical expertise, developing and implementing maintenance management programs and ensuring that their capital assets are constructed and maintained in accordance with minimum federal and provincial standards. Priority is given to projects bearing a direct impact on the health and safety on-reserve. Funding for minor capital projects and operating and maintenance is provided under a funding formula and managed by the First Nations. Funding for major capital project is allocated at the regional level on a case by case basis in accordance with national priorities and the five-year regional capital plan.

A recent assessment of capital needs on-reserve has demonstrated that the existing needs greatly exceed the level of available funding. This assessment will necessitate careful targeting of capital resources, greater effort in extending the life of assets through maintenance, as well as encouraging First Nations to access private funding sources.

Key initiatives under the Capital Facilities and Maintenance Program include:

- **Accelerated Water and Sewer**: The improvement of living conditions on-reserve is a priority of the department as outlined in ***Gathering Strength***. Under this initiative, additional

resources are identified to continue to address urgent upgrade requirements in water and sewer systems and to provide basic services where none are existent.

- **First Nations Tendering Policy**. The Framework to guide the development of a First Nations tendering policy was finalized in the fall of 1998 and made available to First Nations through DIAND regional offices as well as on the department's Internet site. First Nations are required to develop tendering policies as a condition of funding related to federal funded capital projects over $100,000, excluding housing. Operational parameters have been identified to allow for the use of the construction management approach in implementing capital projects. The next step will be a capacity building exercise for First Nations, regional staff and Aboriginal contractors as it relates to contracting practices for capital projects taking place on reserve. A review of existing training material on contracting practices will be undertaken in order to reflect the tendering policy and the construction management approach. The updated training package will be delivered in 2000-2001.

- **Capital Program Review**. A key objective of the ***Gathering Strength*** initiative is the fundamental rethinking of existing programs. A review of the capital program has started and will examine, identify and make recommendations on structural reforms aimed at improving the effectiveness, efficiency and sustainability of the program.

Capital Facilities and Community Services Program

The Capital Facilities and Community Services Program is the departmental funding mechanism used for the implementation of capital projects and community services on reserve. It oversees the following activities:

- evaluation of capital projects under contribution arrangements
- rental of facilities for federal and band operated schools
- capital funding: capital planning projects
- level of service standards and management of teacherages on reserve
- capital facilities and community services

Funds for the services listed above are subject to community need as well as the size, value and complexity of the proposed project. Funds are distributed through contribution arrangements, flexible transfer payments and alternative funding arrangements.

On Reserve Housing Program

The new federal on-reserve housing policy introduced structural reforms in July 1996 with the objectives of:

- protecting and extending the life of existing housing;
- constructing quality, affordable, new housing designed to respond to the variety of needs within the community;
- supporting individual pride and responsibility; and
- linking housing activities to training, job creation and business development.

Participating First Nations develop community-based housing programs and multi-year plans, which act as tools to coordinate resources, measure progress, foster accountability to the community as well as serve as the basis for federal funding. First Nations will continue to operate under the former policy regime until such time as they meet the requirements of the on-reserve housing policy.

Under this policy the federal government reallocated $160 million between 1996-1997 and 2000-2001. Funding totalled $352 million in 1996-1997 and $339.4 million in 1997-1998. From 1998-1999 to 2000-2001, the total federal spending is expected to be roughly $300.0 million annually.

Key initiatives under the on reserve housing policy include:

- **Working with the Canada Mortgage and Housing Corporation**: The department is working jointly with the Assembly of First Nations (AFN) and Canada Mortgage and Housing Corporation (CMHC) to explore:
    - increased leveraging of private sector funds;
    - alternative forms of housing governance;
    - increased linkages between housing and economic development; and
    - alternative housing program options.

  An inventory of best practices has been developed in the following areas: innovative financing; design and construction techniques; use of local resources; use of social assistance; and link with economic development. This inventory was provided to the AFN for their use and inclusion on their Web Site. Also, a series of brochures were produced and delivered to all First Nations. They complement the training initiatives currently underway.

- **Innovative housing fund**: The Innovative Housing Fund was announced in July 1998 as part of ***Gathering Strength***. The fund provides First Nations an opportunity to explore new or innovative approaches that could enable them to access to better housing. Projects could include, but are not limited to:
    - new or innovative house building technology or techniques:
    - alternative house designs;
    - energy sources;
    - water supply and/or distribution, sewage collection and/or disposal; and
    - innovative housing portfolio management or financing options.

  Projects must be cost shared with the private sector and/or First Nation(s) or First Nations organizations.

- **Community-based housing training package**: Funds have been identified as part of the ***Gathering Strength*** initiative to be utilized in support of First Nations training and capacity building initiatives related to housing, with a focus on the new housing initiative. DIAND is working with the AFN and CMHC to develop and test two training packages. The first is a training-for-trainers package and the second is a community workshop package. The objective is to develop capacity within First Nations organizations to be able to develop and maintain an up-to-date comprehensive set of housing policies, programs and plans.

- **Other Issues**:

  Ministerial Loan Guarantee authority

  The departmental loan guarantee authority for housing on reserve has been increased from $1.2 billion to $1.7 billion. The Governor in Council approved revised terms and conditions governing the administration of loan guarantee authority.

  Northern Housing Task Team

  The department is part of a working group with the Inuit of Taparisat Canada and CMHC regarding Inuit housing.

  Mold Action Plan

  The department is working with AFN, Health Canada and CMHC on the development of a national strategy on mold. A householder pamphlet and a mold information kit will be available shortly. Workshops and training sessions are being held to increase awareness and promote preventative measures.

  Homelessness

  The department is working with Human Resources Development Canada and other federal departments on the implementation of the initiatives announced in December 1999 to address homelessness, in partnership with the provinces/territories, municipal governments and non-government agencies involved in the issue.

FURTHER READING

Institute On Governance, The Public Works Function in Canadian Jurisdictions, (RPS for INAC, October 1998).

Institute On Governance, Self-Government Agreements and the Public Works Function, (RPS for INAC, October 1998).

Institute On Governance, Public Works in Small and Rural Municipalities, (RPS for INAC, March 1999).

Institute On Governance, A Compendium of Provincial Public Works Statutes, (RPS for INAC, March 1999).

GOOD PUBLIC WORKS MANAGEMENT IN FIRST NATIONS COMMUNITIES

Building Capacity for Sound Public Works in First Nations Communities

A Planning Handbook

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Public Works and Government Services Canada
Travaux publics et Services gouvernementaux Canada

Canada

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I. INTRODUCTION

A good public works infrastructure is essential to the health, safety and well-being of any community. Unless, a community has a solid basis of well-maintained roads, a good water supply, sound sewage and solid waste disposal and a workable planning system, among other things, improved social well-being and economic expansion will be difficult, if not impossible, to achieve and sustain.

Many First Nations communities are adept at handling public works. Others, less so. This handbook is a planning guide for a First Nations or a group of First Nations whose goal is to achieve significant improvements in their capacity to govern and manage public works in their communities.

The handbook should serve First Nations in a variety of situations. Some examples include:

- Those First Nations who are negotiating or implementing self-government agreements that will provide for increased responsibilities in public works; or
- First Nations who are moving to new communities where the public works challenge will be considerably changed from that of their former community; or
- First Nations who are about to undergo a major building program or who are about to take over a complex new facility; or
- First Nations who are unhappy with the current state of their public works function and are looking to make substantial changes.

The Handbook is divided into three major sections addressing the following questions:

- What is public works? (Section II)
- What is building capacity and what are commonly used approaches and tools? (Section III)
- How can a community develop and implement a capacity-building plan for public works? (Section IV)

Purpose of this Handbook

This handbook is a planning guide for a First Nations or a group of First Nations whose goal is to achieve significant improvements in governing and managing public works in their communities.

II. WHAT IS PUBLIC WORKS?

This section examines three aspects of public works: 1) its scope - that is, the set of functions encompassed by the term; 2) the range of governing and management tasks or activities that a sound public works demands; and 3) the reasons why public works is so challenging for most communities.

A. Scope of Public Works

Public works covers the broad spectrum of activities essential to the smooth running of any community. These activities tend not to be controversial unless they are not functioning properly. In that sense, they are often 'taken for granted'.

Included in the term public works are very visible community assets such as government buildings and schools, including their upkeep and maintenance. Further, the term encompasses the roads, bridges and related infrastructure such as street lighting as well as the ability to keep these in good repair and to clear snow in the winter. Providing fire protection, critical in remote communities for house fires and for bush and forest fires, and ensuring energy supplies for heating and electricity in an efficient and environmentally friendly manner are also part of public works, as is work site safety.

Other elements include systems for collecting, treating and disposing of sewage and solid waste, for providing potable water, for developing and maintaining parks and recreation facilities, for wharves, harbours and airstrips, for land management and expropriation and for the development of community plans and zoning by-laws.

Finally, public works might also entail, in some communities, regulating the construction of private buildings through such means as building and fire codes.

B. Governing and Managing Tasks

Governing is the primary responsibility of political leaders in a community. Managing, on the other hand, tends to be the responsibility of technicians or staff. In practice, there is often considerable overlap between these tasks.

Governing responsibilities for public works are many and varied. Among other things, Chief and Council establish the overall direction of the public works function, adopt by-laws and policies to guide staff and members, approve long term capital plans, set yearly budgets, establish the public works organization, ensure clarity in the roles and responsibilities of the principal actors, and ensure that the rest of the First Nations staff provide the necessary financial and administrative support. In performing these governance tasks, Councils will need to be mindful of overall principle of sound governance - transparency, accountability to community members for their actions, the importance of maintaining high standards of personal conduct, the provision for redress for unfair treatment of members and so on.

Within the parameters established by Council and by other governments, managing responsibilities include:

- *Planning* - because of the long lead times required to build community assets;
- *Designing* - public works facilities are complex and in many cases highly technical;
- *Financing* - community assets are expensive to build and maintain;
- *Constructing* - these challenges vary from play structures in parks to multi-million dollar schools;

- *Maintaining* - all of the physical assets of a community from roads to buildings to potable water systems require constant upkeep and regular maintenance;
- *Regulating* - because many of the public works functions affects health and safety of the community or have the potential for harming the environment, they are often inspected to ensure that the facilities themselves and in some cases their operators are meeting certain standards often set out in a law;
- *Responding to Emergencies* - such emergencies could be spawned by water quality, environmental spills, fire, floods, etc.

Combining the range of public works functions with the principal governing and managing tasks leads to the following definition of public works.

WHAT IS PUBLIC WORKS?

Public works, therefore, consists of the governing, planning, design, financing, construction, maintenance, emergency response and related regulatory regimes pertaining to:

- public buildings (government buildings, schools, libraries, public housing, etc.)
- roads, bridges and related infrastructure
- work place and construction site safety
- systems for providing potable water
- systems for collecting, treating and disposing of sewage
- solid waste collection and disposal
- development of community plans and zoning by-laws
- parks and recreation
- wharves and harbours
- community electrification & energy management
- land management and expropriation
- fire protection & suppression

Public works may also entail, in some instances, the regulation of the construction of private dwellings through building and fire codes etc.

Annex A refers to a variety of resource materials, some of which provide more detail on the nature of Public Works.

C. Challenges of Governing and Managing Public Works

A definition of public works tells only part of the story. An obvious next question is the following: what are the principal challenges facing First Nations in developing sound public works. Several facets of public works appear to be critical.

1. *The wide range and variety of the functions within public works*

Public works encompasses many different functions. The provision of potable water has little in common with the construction and maintenance of roads. Similarly, the design and construction of a new school present different demands to maintaining the structure. The regulatory nature of many public works functions adds to the complexities involved.

The wide range and variety of functions leads to another conclusion: there is no one best way to govern and manage public works. Each community has to search for its own approach that best meets its responsibilities within the context in which it operates. There are no magic formulas or easy solutions.

2. *The technical nature of public works*

Many aspects of public works demand skilled people. Engineers from several different disciplines, financial experts, project managers, lawyers, construction experts - these are some of the highly trained and experienced individuals required to ensure sound public works. Further, as the variety of technical systems involved - from sewage treatment to heating building - become more complex and reliant on sophisticated technology, even the maintenance of the facilities poses new and more demanding challenges. Finally, the technical nature of public works also adds to the governing challenges of Chief and Council, many of whom do not have technical backgrounds.

No small community can possibly have all of the technical expertise necessary to govern and manage public works. Therefore, these communities need to 'buy' the needed expertise or services from time to time either from neighbouring jurisdictions or outside contractors. Either solution means managing outside experts and this can present its own special challenges.

3. *Public works affects everyone*

Unlike many government programs, public works affects every community member in important ways. Here are some examples:

- Some services such as the provision of potable water can be partially financed through user fees. Administering and collecting such fees can be difficult in some communities.
- Some public works activities place specific responsibilities with members of a community. For example, community members may be responsible for the maintenance of community owned housing that they occupy. Other members may have roles to play in the maintenance of private wells, water cisterns or septic systems.
- Zoning systems can place restrictions on the use of property controlled through certificates of possession.
- The development of comprehensive community plans requires a broad consensus within the community if such plans are going to work effectively.
- Badly maintained roads or public buildings are obvious to all members and can result in significant pressures on political leaders to 'fix things'.
- Handsome, well maintained public buildings, on the other hand, by reflecting Aboriginal culture, can be an immense source of pride to the community and serve as a visible statement of who they are as a people.

- Public works underpins the success or failure of many other community programs including housing, economic development, education and environmental management to name a few.

4. Sound public works demands solid relationships with many outside the community

Good external relationships with other governments and institutions outside the community are critical to sound public works. Many small communities, for example, are not capable of providing the wide variety of public works services required by their community and therefore enter into contractual relationships with other governments for such services. Tribal councils are often mandated to provide critical advisory services and therefore this is an important relationship to manage. In most, if not all, cases, critical funding comes from federal departments and these external relationships are therefore crucial. And finally, outside contractors, universities and colleges and professional associations can play central roles for assuring sound public works.

Cooperation between neighbouring jurisdictions on the provision of public works functions can have other benefits. Through mutual aid agreements, several neighbouring communities may agree to work together to provide a certain public works function, such as fire fighting services. Working together in such cases may provide for a better and more financial effective provision of services. Alternatively, there is another fundamental reason for maintaining good relations with neighbouring jurisdictions: some public works functions can affect neighbours in negative ways - for example, poorly treated effluent from sewage treatment plants can pollute neighbouring rivers and lakes. Thus, First Nations and their neighbouring jurisdictions need to maintain cordial relationships and have open lines of communication, should emergencies occur.

5. The stakes can be high

The recent tragedy at Walkerton, a small town in southwestern Ontario, illustrates what can happen if a critical public works function goes badly wrong. In May 2000, a deadly form of E.coli entered the town's drinking water. The contamination was confirmed on May 15. It was six more days before residents were alerted. Six people died and 2300 others became ill. It is hard to imagine any other locally delivered government service having such a catastrophic impact on a community.

6. The complex, regulatory nature of public works

The Walkerton tragedy also illustrates another compiexity of public works - its regulatory side. Testimony at the Walkerton inquiry and media reports reveal a long list of problems with the regulatory system: the lack of a legislative base for water standards in Ontario; poorly defined roles and responsibilities; lack of accreditation for testing laboratories; no ongoing accreditation of water plants; water operators who were not certified; equipment breakdowns that were not reported; political leaders who may not have understood their responsibilities; and poor communication with the public. There is no reason to believe that First Nations communities are immune to a similar list of problems.

Thus, paralleling the challenges stemming from the technical nature of public works is the depth and complexity of provincial and federal legislation affecting public works. This adds another layer of difficulties for Chief and Council, who have ultimate responsibility for the health and safety of their communities.

PRINCIPAL CHALLENGES

To summarize, some of the main challenges in governing and managing public works include:

- The wide range and variety of the functions within public works
- Its highly technical nature
- The fact that it affects all members of the community in critical ways
- The importance of sound external relationships with a wide variety of other governments and institutions
- The high stakes if something goes wrong
- The complex, regulatory nature of public works

Further information on the challenges facing Public Works in small Canadian communities is contained in "Public Works in Small and Rural Municipalities", referenced in Annex A.

III. WHAT IS BUILDING CAPACITY?

This section explores a definition of capacity building, the question of whose capacity is being developed and with what tools or approaches, and finally what experience both in Canada and abroad has taught us.

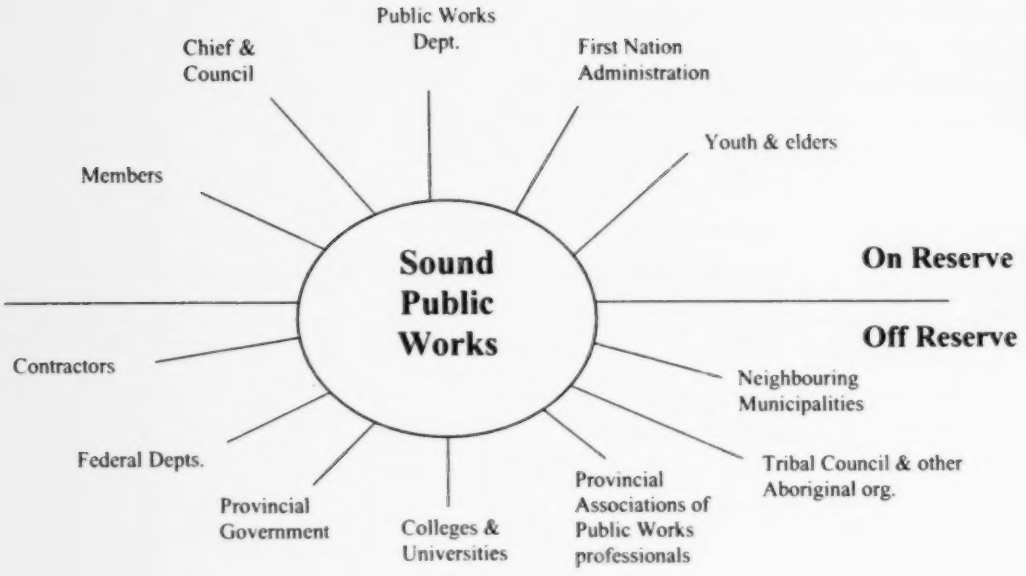
A. A Definition of Capacity-Building

The United Nations defines capacity building as "the process by which individuals, organizations, institutions and societies develop abilities (individually and collectively) to perform functions, solve problems and set and achieve objectives". It is an approach that builds independence by increasing competencies. Put in the context of this handbook,

> Capacity building is the long term process whereby Chief and Council, their staff and members of the community improve in a sustainable manner the way they perform public works functions.

B. Whose Capacity & What Approaches or Techniques

As the previous section has illustrated, there are a number of 'actors' both on and off reserve that lead to sound public works in First Nations communities. The diagram below illustrates this point.



The above diagram leads to four broad strategies to building public works capacity in a First Nations community. The first would focus on individuals, usually on reserve. Likely participants in such an approach would be the staff of the public works department or members of the community (for example, to improve home maintenance skills) or individual members of Council. Such approaches tend to be short term, low cost and often low risk because they have little or no impact on the politics of the community. For these reasons, this type of capacity building strategy tends to be popular. (Indeed, when many people refer to capacity building, they often have in mind training courses aimed at staff.) The diagram below illustrates the type of common problems or gaps and some of the approaches or techniques to deal with them.

Common Techniques Directed at Individuals

Common Gaps

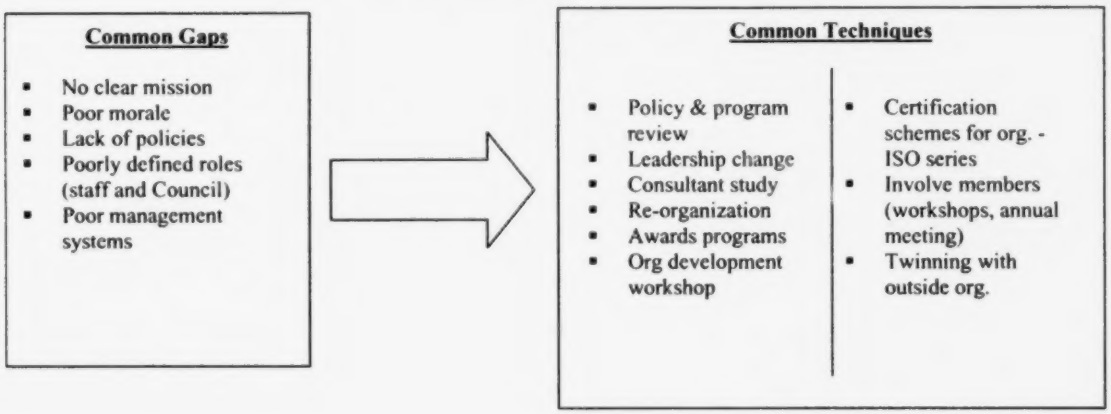
- Skills
- Knowledge
- Values or attitudes
- Tools

Common Techniques

- Training courses
- Circuit Rider Training
- Building learning networks
- Certification
- Develop prof. associations
- Mentoring
- Buy the skill
- Recruit differently
- Change incentives e.g. pay, recognition
- Provide tools e.g. computer systems

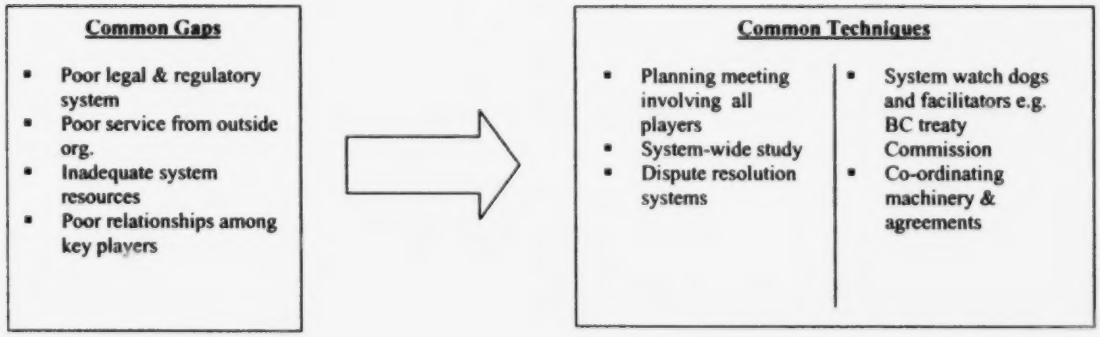
A second broad strategy might be to focus on the performance of the First Nations' key *organizational components* relating to public works - Chief and Council as a collectivity, the public works department, and the rest of the First Nations administration. This approach would take longer than the first strategy, would be costlier and would entail higher risks because it could affect the political life of the community. Potential benefits, however, are correspondingly higher. The diagram below illustrates common problem areas and techniques to deal with them.

Common Techniques Directed at Organizations



Focusing on the *system* as a whole - that is, on the nature of the relationships among the principal actors both on and off reserve - might be a third broad strategy. Time requirements, cost and risk would all increase. The potential payoffs, however, might be higher than either of the first two strategies. The diagram demonstrates commonly identified problems that drive this choice of strategy and approaches to deal with them.

Common Techniques Directed at Systems


Common Gaps
Poor legal & regulatory system
Poor service from outside org.
Inadequate system resources
Poor relationships among key players
Common Techniques
Planning meeting involving all players
System-wide study
Dispute resolution systems
System watch dogs and facilitators e.g. BC treaty Commission
Co-ordinating machinery & agreements

A fourth strategy might combine elements of the first three strategies - that is, it would focus on individuals, organizations and elements of the system as a whole, especially key external relationships. Such a strategy would be comprehensive and long term.

> In summary, the overall approach to capacity building and the tools and methods to be utilized will be highly dependent on the answer to the question "Whose capacity requires strengthening?" Further, time lines, costs and risks will be depend on whether individuals, organizations or the system as a whole become the primary focus.

C. National & International Lessons

The discussion above indicates the potential complexity of capacity building. What we have learned, therefore, about capacity-building from experience in both Canada and abroad becomes an important issue. Some principal lessons appear to be the following:

1. Local ownership and leadership is critical

Funding agencies can not play the lead role or dictate the content, pace and direction of capacity building. Rather, **the lead must come from the community itself**. Further, the community and its leaders must be genuinely committed to making improvements. Such a community-driven approach often requires dramatic changes in the way in which funding agencies operate. They must become better at adapting their policies and procedures - their way of doing business - to the needs and circumstances of the communities they serve. Beyond that, funding agencies must see their role, ideally, as being to put themselves out of business. A funding agency is successful when a community no longer needs its help, or needs less of it.

2. Capacity building is ultimately about politics, political leaders and their relationship with their citizens

A strong bond of accountability between citizens and their leaders generates demand for capacity building. The quality of a government's performance is determined to a great extent by the interplay between it and its citizens. Pressure by citizens and citizen organizations for improved public sector performance will drive capacity building efforts and ensure that local ownership is respected.

One way to develop strong demands for high quality public services is through the wide dissemination of information that would allow citizens to monitor government performance. Disseminating such information can have a powerful impact on the attitudes and behaviour of public officials. In short, experience has shown that putting relevant and easily understandable information into the hands of citizens promotes a more accountable and effective government.

3. Effective capacity building takes time

Today's industrialised countries took centuries to develop effective public sector institutions. Developing countries and First Nations reclaiming law-making authority are trying to do the same thing in the space of a few years. Funding agencies require a longer term perspective because

fundamental change can take decades. Short term projects, if they are not consistent with a longer term, capacity building plan, tend not to be helpful.

4. Long term partnerships can be critical to successful capacity building

Partnerships and effective capacity building appear to be closely linked. That said, 'genuine' partnerships appear to be more the exception than the rule. If capacity-building is to be led by communities and not funding agencies, then the impetus for defining the terms of the partnerships should rest with the communities. Factors leading to high performing partnerships appear to be the following:

- Similarities in orientation and values with respect to capacity building.
- Motivations of each of the partners are known (there are no hidden agendas) and taken into account.
- The partnership is formalized through an MOU or letter of agreement.
- The partners share a similar vision of where the partnership might lead but start 'small' in a step by step manner.
- The partners devote the required time to keep the relationship on a solid footing.

IV. DEVELOPING A CAPACITY BUILDING PLAN FOR PUBLIC WORKS

This section divides into three parts. The first focuses on the rationale for developing a plan for capacity building for public works. In the second, the emphasis shifts to examining in detail an approach or process that a community might undertake to develop such a plan. And in the third, there is an example of how an actual capacity building plan might be organized and what might be its principal sections.

A. The Case for Planning

A plan outlines a series of actions that a community will undertake, often within a set time period, to move from its current to a target position. Thus, in a self-government context, a plan would outline the activities that the First Nations will effect to ready itself for assuming all of the new public works functions outlined in the agreement.

Several reasons prompt the need for such a plan in this and other circumstances where a First Nations is undertaking significant improvements to its public works function:

- Public works, as noted earlier, is complex, involving a number of governing, managing and regulatory tasks in a wide range of areas, many of which are technical and legal in nature. A plan will help deal with this complexity by putting order into the capacity building process.
- The process of planning for capacity building is an exercise that in itself builds capacity. Authors of the plan and those that review it are forced to identify their community's challenges and devise solutions for them - the essence of what capacity building is all about.
- Successful capacity building over a sustained period often involves partnerships - partnerships with funding organizations, learning institutions, regulatory agencies and so on. A plan forces the partners to think through their roles carefully and come to agreement on common

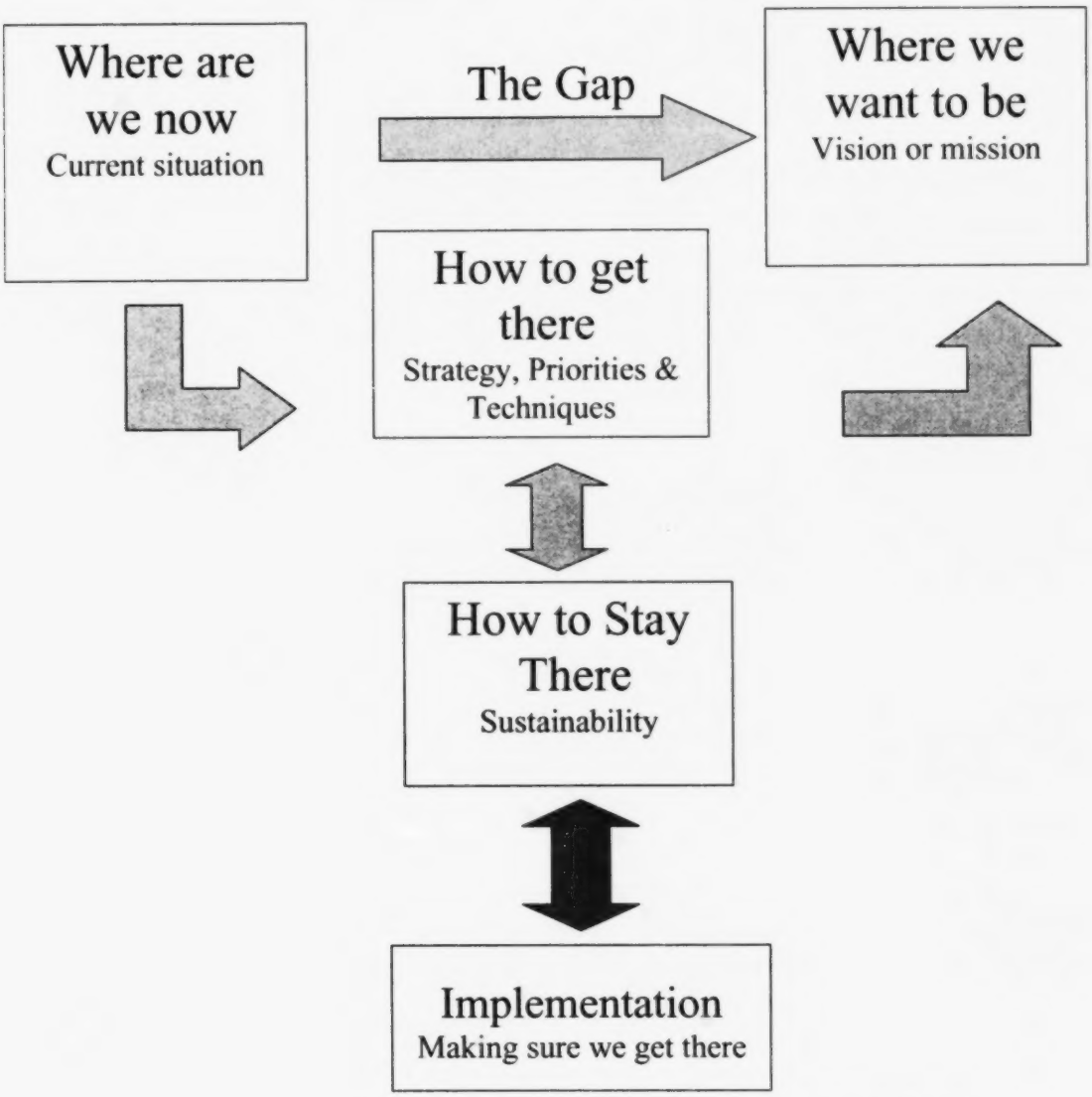
objectives. That a plan is critical, indeed essential, to successful partnerships is now widely recognized.

- Planning processes, if properly designed, can involve members of the community in determining the final product and in this way can gain community-wide commitment for change.
- Another benefit of a plan is that it forces a community to think through its priorities. Seldom can everything be accomplished all at once. A planning process thus compels communities to make choices about what is important to do now as opposed to later.
- Finally, a plan can be an important accountability device to the community. It indicates the commitment of political leaders to making significant changes affecting their community's well being. Community members thus have a concrete means of holding their leaders accountable.

B. Developing a Plan for Capacity Building

The diagram on the next page provides a simple framework for developing a plan for building capacity in public works.

Analytical Tool for Developing a Plan for Capacity Development



Adapted from Capacity Assessment and Development, UNDP, January 1998, p. 12.

From this framework seven steps appear necessary in developing a capacity building plan as the box below illustrates:

Principal steps to developing a capacity-building plan

Step #1: determine the nature of the 'gap'

Step #2: decide on an overall strategy

Step #3: determine priorities and set time frames

Step #4: match the need to appropriate capacity-building techniques

Step #5: check to ensure sustainability and financial viability

Step #6: develop a process to ensure effective implementation

Step #7: seek the necessary approvals for the plan

The remainder of this section elaborates on each of these steps.

Step #1: determine the nature of the 'gap'

Determining the nature of the capacity gap in public works involves answering two basic questions:

1. ***What is the current situation?***
2. ***Where would the community like to be?***

Answering these questions is often easier said than done. In fact, of the seven steps, this one is probably the most difficult.

A good starting point is where the community wants to be. This may be laid out in a self-government agreement or clearly identified by the move to a new community. Or where the community wants to be may be much less clear - perhaps a feeling of unease among Chief and Council and vocal members of the community that 'things' are not going well.

In any case, questions must be asked not only about where the community would like to be (the end result), but also about the process of getting there, including the potential use of temporary measures (the transition process). For example, in a self-government agreement, a community might decide not to take up, in the near term, all of the public works powers it has negotiated.

There are a number of methods that may be used to get a sense of where to go. The more complex the change facing the community, the more likely is the requirement for a variety of these to be utilized.

- **Workshop with Chief & Council** - Workshops with Chief & Council, followed by a community meeting or other form of community consultation, is one method of determining "where we want to go". This method is particularly useful in encouraging the local community and First Nations staff to take "ownership" of the public works function.

- **Community Consultations** - Soliciting opinions from community members and staff through survey instruments is one form of consultation. Other forms include focus groups, articles in community newspapers asking for comments and soliciting input from existing community organizations. Such methods provide the opportunity for more wide-spread community input and more "factual" data but may not encourage "ownership" by the community, particularly if the required change is significant. Annex E contains a brief description of a wide range of techniques for involving citizens.

- **Future Search Conference** - A technique called a Future Search Conference is especially useful as a visionary exercise for groups as large as 80 people. It involves moving participants through a carefully designed agenda - starting with the past (what went well and not so well); moving to the present (what are the principal challenges facing us); focusing then on the future (what is the common vision that we have for dealing with the issue at hand) and then ending with the development of an action plan based on the common vision. (Annex A contains a reference on how to obtain more information on this technique).

- **Key Competencies** - Identifying the "key competencies" required for any given Public Works activity may assist in determining the human resource aspects of a future vision. For example, the Director of Public Works might have the following key competencies for a particular community:

Key Competencies of a Director of Public Works

- General management skills
- Project management skills
- Human resource management skills
- Time management skills
- Negotiation skills
- Communication skills - written and verbal
- Knowledge of finance and budgetary procedures
- Knowledge of the regulatory regimes for each Public Works activities
- Basic understanding of the "technical" side of each Public Works activity

- **Public Works in Adjacent Communities** - Comparing Public Works activities to those of similar communities in the area is another useful technique to help determine future directions. Is the community's public works providing similar types and levels of service? Are they being provided as efficiently? What can we learn from the adjacent community? These are some of the questions that such a comparison approach will generate.

In summary, there are a number of key questions that should be asked when deciding where a community is going with its Public Works.

Principal Questions to Ask About the Community's Vision

- What have Chief, Council and community identified as being public works activities that require improvement?
- Is there a common vision of the direction the community's public works should go? If not, is it possible to achieve consensus?
- What will be the key competencies required for the principal positions in the public works organization?
- How do the public works in the community compare to those in adjacent communities?

Once the community has a clear vision of where it would like to be, the next question to answer is what is the current status of public works in the community. Where a community is may be easier to answer than where it wants to go but such a question still presents challenges - challenges which are technical, legal, governance related or sometimes politically sensitive. To help a community answer this question are a multitude of approaches including the following:

- **Assess Public Works Staff Capacities** - Do the public works staff meet the key competencies required for their positions? Are they certified or licensed? If any staff do not have their required key competencies, these shortfalls need to be identified. The assessment should also include a look at why the staff lacks the required skills and what additional staff or outside resources may be required.
- **Assess Community Members' Capabilities** - There are a number of public works functions that may require involvement of local community members. These functions might include the maintenance of their homes, private wells and private septic systems. In some communities, community members may not meet these responsibilities for a variety of reasons: a lack of skills, a lack of clarity about who is supposed to do what, or a lack of resources. A further issue is the means by which members can hold their leaders accountable. This might require an assessment of the information available - for example, on testing results for potable water in the community. Some jurisdictions require that such information be regularly provided to their citizens.
- **Assess the Regulatory System** - Regulation is an important element of public works. The provision of potable water, the treatment of sewage and solid waste, construction and safety-related issues, fire protection - these are a few examples of where regulation plays a critical role. There are a number of characteristics that are important for a sound regulatory system, including:

Characteristics of a Sound Regulatory System

- Clear, concise, consistent and measurable regulatory objectives;
- A legislative base;
- Clear roles and responsibilities among the key players, including what to do in an emergency;
- An appropriate balance of promotion, monitoring and enforcement activities;
- A regulator that is set up and organized in a way that limits the ability of other stakeholders from unduly influencing monitoring and enforcement;
- An understanding of the regulated group, including who they are and how they behave. This knowledge will assist in developing effective promotion, monitoring and compliance;
- Regular evaluation for effectiveness, and adjustment from time to time due to intervening factors.

Evaluating the community's regulatory system against this list of characteristics may help identify areas that need improvement. Annex B provides a more detailed look at the characteristics of sound regulation.

- **Assess Elements of the Infrastructure** - an assessment of the current state of some of the community's infrastructure may help identify which areas require technical improvements in order to meet standards set out in by-laws, regulation and policy.

- **Assess the Organization of the Public Works Function** - Areas to evaluate include the nature of morale, clarity of mission, whether there are policies in place, and whether public works staff and politicians have clearly defined roles and responsibilities. Further, the public works organization relies on financial and human resource services, among other things, from the central administration of the First Nations. Their adequacy needs to be assessed as well.

- **Assess the Nature of the Community's Emergency Response Capacity** - Responding effectively to emergencies that threaten the community like floods, nearby forest fires and spills affecting the environment can be critical to saving lives and preserving community assets. The following provides some of the principal characteristics of a sound emergency response system (more details are provided in Annex C).

Characteristics of a Sound Emergency Response System

- The range of emergencies to be covered is comprehensive
- Roles and responsibilities of the major players both on and off reserve are clearly laid out for each kind of emergency and are in writing through a formal MOU
- There is an emergency response team identified to be the focus of the response effort
- Sufficient resources can be made available by the various players to deal with the emergency
- There are clear expectations about response times
- How the various players are to communicate with one another during the emergency are laid out
- There is a communications plan for dealing with public concerns
- Emergency response team members are trained, and periodic tests and exercises of the system are conducted.

For information on developing an Emergency Response Plan see Annex C.

In summary, there are a number of key questions that need to be asked when ascertaining the current status of a community's Public Works function.

Key Questions to Ask About Current Status

- Do public works staff meet their key competencies? If not, why?
- Has the Chief, Council and/or community identified any particular areas of concern? If yes, what are they, and what are their causes?
- Are community members involved in any public works activities? If yes, do they have the skills to perform the activity? Are they aware of their responsibilities? Do they have the resources they require to adequately perform the activity?

- Are the current regulatory and emergency response regimes sound? If not, what areas require improvement and who is involved in these systems outside the community?
- Does the current infrastructure meet technical requirements, codes, by-laws etc. ?

After a complete analysis of "where we are" and "where we would like to be", planners should then be in a better position to define the nature of the public works capacity gap. The following list highlights some of the key areas that may need to be addressed.

Nature of the Gap

1. **Individuals**
   - Community members
   - Chief and Council
   - Public Works staff
2. **Organization**
   - Clarity of roles and responsibilities
   - Mission
   - Morale
   - Policies
   - Administrative systems
3. **System**
   - Regulatory systems
   - Emergency response systems
   - Funding Arrangements
   - Quality of current external relationships
   - Overall system resources

Step #2: decide on an overall strategy

The next step in developing a public works capacity building program is deciding on the broad strategy and determining which area or areas should receive emphasis. As section III noted, there are four basic approaches:

- **Concentrate on individuals** - this approach could be the easiest and least controversial, especially if the focus is on First Nations staff, but may have a more limited impact.
- **Concentrate on the organization of the First Nations** - this approach is more complicated and requires the solid support of the First Nations leadership, but has the potential for greater impact.
- **Concentrate on system-wide issues** - this approach focuses on external relationships with funding agencies, regulatory and emergency response organizations etc.
- **Some combination of all three**.

In determining the most appropriate strategic approach, a number of factors need to be taken into account:

1. **Community Priorities** - The community leadership, perhaps based on extensive community consultations, may have already identified the changes in public works functions that are priority. This in turn may dictate the choice of a capacity-building strategy. The need for improvements in potable water, for example, may require a comprehensive approach involving community members, staff, the public works organization and key outside agencies.

2. **Health and Safety Issues** - If the drinking water is not safe, or there have been construction site accidents due to inadequate safety measures, these issues will likely take priority. Such issues would appear to require a strategy focusing to some extent on system concerns.

3. **Likelihood of Co-operation from Outside Agencies** - System-wide changes require the cooperation of 'actors' outside the community. The community may need to determine if there is sufficient support for the kind of system-wide changes that its analysis of the gaps has revealed.

4. **Commitment of the Current Community Leadership** - All capacity-building, but particularly at the Organization and System-wide levels, requires the strong commitment and support of the community's leadership and preferably of broad sections of the community itself.

5. **Nature of the Change** - The nature of the change itself may dictate the choice of strategy. Thus, a move to a new community may require that a comprehensive strategy, one that involves individuals, the public works organization and the co-operation of a number of external players to effect certain system-wide changes. Similarly, a self-government agreement may implicitly determine the broad outlines of a capacity-building strategy.

Once all of the factors influencing a strategy have been assessed, Chief and Council may need to take a final decision, following consultations with the community and possibly with key outside organizations.

To summarize, some of the key questions to ask when deciding upon a strategy include:

Key Questions to Ask About Strategy

- What are the community's priorities?
- Are there any urgent health and/or safety issues that need to be addressed?
- Does the community have support for change from its funding or other external agency(s)?
- Has the community leadership made a commitment toward change?
- Is the choice of strategy dictated by the nature of the required change - for example, a move to a new community?
- Should the identified change be approached from an individual, organizational, or system wide perspective, or some combination of the three?

- Who should be involved in deciding upon the most appropriate strategy?

Step #3: determine priorities and set some time frames

With a choice of a broad strategy in hand, the community planners can turn their attention to establishing a set of priorities and specific objectives as well as a timeline for meeting these. In general, three to five years is a useful planning horizon to adopt for setting and sequencing priorities.

Some of the key factors in determining what to tackle first have already been canvassed in the choice of a broad strategy. These include the public works priorities established by the community itself, health and safety issues and commitment of community leadership. Other factors include:

Sequencing

Proper sequencing of related activities is essential to the smooth implementation of a strategy. Some goals must be met before others can begin. For example, a community may believe that its water supply is not safe, as there have been reports of e.coli. To improve the situation a member of the community requires training leading to certification in the running of a water treatment plant. However, training takes time. It may be necessary to hire an outside water treatment plant operator to run the plant while the local operator receives further training. Thus sequencing this activity may lead to the following capacity-building activities:

Year 1	Year 2	Year 3
• Hire outside, trained water treatment plant operator on contract • Train local water treatment plant operator	• Have local water treatment plant operator take over running of the water treatment plant	• Ensure plant operator follows-up formal training with on the job training through a circuit rider program

Available Funding

The community must also evaluate its priorities in terms of the funding available. Funding may not be sufficient to meet all of the identified priorities, or the payment of funds may be staggered, requiring the community to put off acting on some priorities until a later date.

Key Questions to Ask About Priorities

- What priorities has the community identified?
- Are there any health or safety issues that need to be addressed immediately?
- Does the community's leadership support the identified priorities?
- Do certain priorities and objectives need to be met before the community can proceed with others?
- Is there sufficient funding available to meet the set priorities and goals?

Step #4: match the need to appropriate capacity-building techniques

Once the priorities have been set, and a timeline established for meeting them, identification of the most appropriate techniques can follow. It is also important, at this point, to do a more detailed cost analysis of the activities making up the plan.

As mentioned in Section III, there are three primary approaches to capacity building, each with its own techniques.

1. People-Oriented Approaches

There are a wide variety of techniques available to develop the capacity of public works staff and the local community leadership. They range from the Circuit Rider Training Programs and other on the job training approaches to certification regimes, to the use of associations of public works professionals, to changing the conditions of employment (such as pay and benefits) in order to attract and retain quality people to seminars and orientation courses.

That said, by far the most common technique of capacity building, and one of the most important, are training courses usually offered outside the community. For this reason, Real Property Services for Indian and Northern Affairs (RPS for INAC) have developed a compendium of certification and training programs for public works professionals. This compendium is referenced in Annex A.

Choosing an appropriate training program is no easy matter. Their number and variety can be imposing. Consequently, Annex D contains a list of principles and best practices for adult learning. These might be helpful for a First Nations trying to determine the best program for its needs.

Improving the quality of current or future staff is not the only way to improve public works capacity at the "people-oriented" level. It is also possible for a community to buy a public works service or hire outside staff to perform the function.

Techniques aimed at building capacity of community members also rely to a significant extent on learning programs, likely delivered in the community. Other approaches might be based on providing positive incentives to members, such as reducing housing rents or introducing home 'ownership' approaches contingent on improvements to housing maintenance.

2. Organization-Oriented Approaches

There are also a number of techniques available to develop capacity at the Organizational level. The large majority of these involve the use of some 'outsider'. Examples include the following:

- The use of a consultant to conduct an organization review
- Hiring a facilitator to work with Chief and Council and their senior staff to improve organizational performance through clarifying roles, developing appropriate policies, and introducing other administrative changes

- Twinning with a neighbouring jurisdiction in order to learn from it how to better deliver public works services
- Joining a certification scheme aimed at organizational improvements such as the ISO series.

Other techniques on the other hand might be internally generated. Replacing the head of the public works organization is one example. Another is for Council to re-organize itself, say through the adoption of a portfolio system.

3. System-Oriented Approaches

At the system-wide level, there are several techniques for improving capacity. For example, if there is lack of shared vision among key players, a Future Search Conference may be appropriate. On the other hand, if the problem is poor relationships or poor service from an outside organization, then a change in the service provider may be in order. Or, if that is not possible, then a simple system to resolve disputes such as resorting to mediation might be an option.

Another common technique to deal with system-wide concerns is through the use of a Memorandum of Understanding (MOU) in order to better set out roles and responsibilities or to establish agreed on service standards. In complicated systems, a neutral third party can be named by the parties to ensure the smooth operation of the relationships and commitments established in the MOU. This approach has been adopted in claims negotiations but might be useful in complicated regulatory systems as in the public works area.

Costs

All of the above techniques have associated costs. Although a training course designed specifically for the Public Works staff in a First Nations community may be the most desirable, relevant and applicable, it will also be more costly than sending staff away to a generic course. An awards program may well improve staff morale, but does the First Nations have the resources to implement it? It is therefore important at this stage in the planning process to accurately cost the priorities and techniques identified, and determine if the resources available to the community are sufficient to carry them out. This costing exercise might also require a reworking of the priorities and timing identified in step #3 so that activities match the available resources.

Questions to Ask About Matching Capacity-Building Techniques

- Are the "gaps" that have been identified in Step 1, of a people, organization or system-wide nature?
- Which techniques would best fill the "gap"?
- Should the community "buy" the service or build capacity in-house?
- If building capacity in-house (i.e. through some form of training) what form should the training take and where can the required training resources be found (see Annex A)?
- Are sufficient financial resources available to implement the chosen approach?

Step #5: Check to Determine Sustainability

Sustainability is a key element of any capacity building plan. It is one thing to build capacity, another to maintain it. Several factors make sustainability a challenging goal including the following:

- Changes in the political leadership of the community
- The difficulty of retaining high quality staff
- The need for re-certification of staff
- Changes in the demographics of the community members
- Changes in the policies and practices of outside organizations, such as funding or regulatory agencies, on which the community is dependent
- Lack of certainty about funding levels in some circumstances
- Changes in the staff of organizations such as tribal councils from which a First Nations draws services.

All of these factors can be harmful to maintaining public works capacity. Consequently, a community's plan needs to anticipate them and provide some flexibility to be able to develop a response.

Questions to ask about Sustainability

- What are the likely changes that the community can anticipate, changes that will reduce its capacity to govern and manage its public works function?
- How should the plan be adjusted to meet these changes?
- What contingencies need to be added to the plan to deal with unanticipated change?

Step #6: Implementation

The final step in developing a plan is to focus on how it will be implemented. Experience with implementation suggests that this aspect of the plan might address the following:

- **Who will have overall implementation responsibility?** - Successful implementation depends to a large degree in assigning an individual or an implementation group with the responsibility for this task. In addition, this individual or group needs to have the authority and resources to do the job. This usually means a budget, dedicated staff, if appropriate, and receiving a specific mandate from Chief and Council.
- **Is it clear what successful implementation means?** - The mandate of the implementation team should set out what success means in this undertaking. This will require answers to such questions as When will implementation be complete? What are the major milestones to be achieved along the way? And what are key standards that our public works activities must meet?
- **How will Chief and Council monitor results?** - The implementation team as part of its mandate will need clear instructions from the community's political leaders about when it is to report on progress and how often. Further, the team will need to have some understanding of

how the plan can be modified. For example, within certain limits the team might be able to make minor changes to the plan. Major changes would require approval of Chief and Council.

- **How will the community be kept informed of progress?** - As part of its mandate the implementation team will need to keep the community informed of progress implementing the plan. This might occur in a variety of ways - through a community newspaper, a web site, special meetings, written documents posted in convenient places throughout the community and so forth.
- **How will the plan be updated?** - Plans tend to become less and less relevant with time. Conditions change. Funding assumptions are either too conservative or do not anticipate a new source. Estimated costs need to be revised. External partners change or new opportunities suddenly present themselves. Given all of this, it is likely that the implementation team will need to revise the plan periodically and seek the concurrence of the political leadership for the revisions. This might occur on an annual basis.

Questions to ask about Implementation

- Does the implementation team have the necessary mandate resources and skills to do the job?
- Is the definition of successful implementation clear?
- How will minor changes be accommodated?
- How will Chief and Council hold the team accountable for results?
- How often will the plan be updated?
- How will the community be kept informed of major developments?

Step #7: Final approval for the Plan

The final draft of the plan of the plan will likely require the approval of Chief and Council. In an extreme case - say a move to a new community - the nature of the change may be so significant as to require, in addition, overall approval by the community.

Approval in either case will likely flow more smoothly if the process for developing the plan has involved Chief and Council and the broader community at critical junctures along the way. In addition, should the changes involve the participation of agencies outside the community, they too will need to be involved in the early stages of the plan's development. Indeed, a partnership with potential key outside interests like funding and regulatory agencies and with service providers like the Tribal Council and learning organizations such as universities and colleges may be called for in the development and execution of the plan.

C. WHAT MIGHT A PLAN LOOK LIKE?

As a way of summarizing this section of the handbook, it is useful to lay out what might be the Table of Contents of a typical Capacity Building Plan for public works (see below).

It is worth stating again one of the critical themes of this handbook: a capacity building plan, without the support and commitment of the community and its leaders, will not succeed. The process for building the plan is at least as important as its contents.

FIRST NATIONS CAPACITY BUILDING PLAN
TABLE OF CONTENTS

I. INTRODUCTION

- Purpose, scope, methodology and organization of report

II. CONTEXT

- Description of the community
- The public works function - description, past history, key players
- Forces for change in the function

III. NATURE OF THE GAP

- Where the community would like to be
- Assessment of current status
- Principal elements of the gap

IV. OVERALL STRATEGY

- Key options to close the gap
- Assessment of the options
- Preferred option

V. PRIORITIES AND TIMING OF PRINCIPAL ACTIVITIES

- Determining priorities
- Timing and funding considerations
- Proposed activities
- Estimated costs and funding sources
- Principal partnerships

VI. SUSTAINABILITY CONSIDERATIONS

- Anticipated changes and proposed response
- Contingencies for unanticipated changes

VII. IMPLEMENTATION

- Make-up, mandate and budget for implementation team
- What constitutes success
- Monitoring by Chief and Council
- Communicating with the community

VIII. CONCLUSIONS

- Importance to the community of this initiative
- Need for support, co-operation and accountability

V. CONCLUSIONS

This handbook is a planning guide for a First Nations or group of First Nations whose goal is to achieve significant improvements in governing and managing public works in their communities. Seven essential points emerge from it:

1. Public works is a complex, multi-faceted function essential to the health safety and overall well-being of any community.

2. It is a challenging function to govern and manage. Aspects of it are highly technical. It affects everyone. Failures can result in sickness and even death. And for that reason it has a complex legal and regulatory side demanding collaboration from players both on and off the First Nations community.

3. For the purpose of this handbook, capacity building is the long term process whereby Chief and Council, their staff and members of the community improve in a sustainable manner the way in which they perform the public works function.

4. It is useful to identify four broad strategies for building public works capacity - strategies aimed at a) individuals, b) the public works organization including Chief and Council, c) the system as a whole including key external players or d) some combination of the first three.

5. Based on experience both in Canada and abroad, successful capacity-building demands ownership by the First Nations community and its leaders, a recognition that it is ultimately about politics and political change, long planning horizons and effective partnerships.

6. Capacity building for significant change - such as a move to a new community or the implementation of self-government affecting public works - demands planning.

7. The handbook identifies a seven-step process for developing a plan for capacity-building. Critical to the success of any such plan is the participation by the community leadership and by the broader community itself. Indeed, process may be as or more important than the quality of the research and analysis underpinning the plan.

ANNEX A
MATERIALS TO AID PLANNERS

THE PUBLIC WORKS FUNCTION

Institute on Governance, The Public Works Function in Canadian Jurisdictions, (RPS for INAC, October 1998)

This paper describes the legal and regulatory relationship between provincial governments and municipalities in Canada in the areas of land use planning, building codes, roads and bridges, parks and recreational facilities, water and sewage systems, and solid waste collection and disposal. Financing options available for selected functions are also examined. Available on the RPS for INAC website, http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, Self-Government Agreements and the Public Works Function, (RPS for INAC, October 1998)

An examination of how public works functions (public buildings, roads, potable water, etc.) are treated in four sets of aboriginal self-government agreements. It includes an analysis of self-government agreements with regard to (a) the similarities and differences with the tiered governance model developed by the Royal Commission On Aboriginal Peoples; and (b) the treatment of the public works function as it relates to the government's Inherent Right Policy. Available on the RPS for INAC website,
http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, Backgrounder: Public Works Function in Self-Government, (RPS for INAC, March, 2000)

A look at public works in First Nations communities, including the existing legal and policy framework, roles and programs, and building capacity. It also explores the issue of public works in the context of self-government. Available on the RPS for INAC website,
http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, Public Works in Small and Rural Municipalities, (RPS for INAC, March 1999)

A synopsis of how various public works are managed in small and rural municipalities across Canada. This paper illustrates various approaches to public works management (chiefly financing, administration, and training), and examines some of the public works trends and challenges faced by small, and often remote communities, including government downloading of responsibilities, growing use of public-private partnerships and user fees, problems of technology transfer, increased citizen expectations in service quality, and limited resources (time

and funding) for staff training. Available on the RPS for INAC website, http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, A Compendium of Provincial Public Works Statutes, (RPS for INAC, March 1999)

A 'road map' for federal negotiators and Aboriginal counterparts in addressing the scope of public works provisions in self-government agreements. The compendium provides a synopsis of provincial statutes relevant to the following six public works functions: (1) building and safety codes; (2) water and sewage; (3) solid waste; (4) roads and bridges; (5) parks and recreation; and (6) land use planning. Attention is paid to standards and regulations, inspection procedures, appeal or redress mechanisms, and offences and penalties. Available on the RPS for INAC website, http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Profiles of Successful Public Works Delivery in First Nations Communities, a forthcoming publication of Real Property Services for INAC

CAPACITY BUILDING

Capacity Assessment and Development, Technical Advisory Paper No. 3. Bureau for Development Policy, United Nations Development Program, 1998.
Available on the UNDP website, http://magnet.undp.org/Docs/cap/CAPTECH3.htm.

Schacter, Mark, "Capacity Building": A New Way of Doing Business for Development Assistance Organizations, Policy Brief No. 6, Institute On Governance, 2000.
Available on the Institute On Governance website, http://www.iog.ca/publications.html.

REGULATORY SYSTEMS

A Strategic Approach to Developing Compliance Policies, Parts I and II, Treasury Board of Canada, 1992

Regulation of the Private Provision Public Water-Related Services, CEPIS/OPS-II and Malcolm Sparrow, "The Regulatory Craft", Brookings Institute, (Washington: 2000)

SELF ASSESSMENT TOOL

Neegan-Burnside Ltd., Compendium of Information and Training Resources and Self-Assessment Tool, (RPS for INAC, May 2001)

Intended as a tool for First Nations, this compendium is intended to serve as a source of information for First Nations interested in finding out more about public works. It includes an overview of public works functions, Aboriginal and non-Aboriginal sources of information on

related training and certification, and a self-assessment tool to enable First Nations to consider their interests and capacities in taking on a larger role in public works management and delivery.

FUTURE SEARCH CONFERENCE

Weisbord, Marvin and Janoff, Sandra, Future Search: An Action Guide to Finding Common Ground in Organizations and Communities, (Berrett-Koehler, 1995)

ANNEX B
PRINCIPLES OF A SOUND REGULATORY SYSTEM

A review of several Treasury Board documents and other articles on regulation leads to the following key considerations in developing an effective regulatory program. Below is a summary of those principles.

The key principles in developing a sound regulatory program are:

1. **Well Defined Objectives**

   Objectives should be clear, concise, consistent and measurable. These objectives and the key elements of the regulatory program should have a legislative base.

2. **Comprehensive Program Design**

   A program design should take into consideration the capability of the regulated group to comply, the capability of the regulatory system to monitor, promote and enforce compliance and the level of understanding and acceptance of the objectives and rules by the regulated group. An appropriate balance between promotion, monitoring and enforcement activities must be determined, based on an assessment of the factors affecting compliance, the characteristics of the regulated group, and how to best influence them.

3. **An Understanding of the Characteristics of the Regulator**

   The regulator should be set up and organized in a way that limits the ability of other government departments, the regulated group and other interested parties from unduly influencing the monitoring and enforcement of a compliance program.

4. **An Understanding of the Regulated Group**

   An effective regulatory system will have a strong understanding of the regulated group, including who they are and how they behave. This knowledge will assist in developing the most effective promotion, monitoring and enforcement activities.

5. **Identification and Utilization of Allies**

   A good regulatory system will identify those who benefit from the rules (possibly including members of the regulated group itself) as potential allies, and will use them as a resource for the promotion and monitoring of compliance.

6. Ongoing Evaluation

Compliance policies and practices are evaluated regularly for effectiveness, and may be adjusted from time to time due to intervening factors, including budget cutbacks and new enforcement priorities.

ANNEX C
DEVELOPING AN EMERGENCY PREPAREDNESS PLAN

Step 1: Authorize Plan Development by Band Council Resolution (BCR) or Bylaw
The Band must pass a BCR or Bylaw to authorize development of an Emergency Plan. This should be presented at the initial meeting with the Chief and Council for approval.

Step 2: Appoint Band Emergency Coordinator
A key individual should be appointed to manage the development of the Emergency Plan. This person should have an interest in emergency planning and have sufficient status to gain cooperation from the various departments involved in the planning process.

Step 3: Establish Planning Team
The Planning Team should consist of a minimum of six persons who represent the various activities at the Band level, including the Fire Department, Health, Social Services, Public Works, Education, local police, and Band Council. The Team should be headed by the Band Emergency Coordinator and should report to the Chief and Council.

Step 4: Review Planning Process
The Planning Team should determine the number of planning meetings required and estimated time requirements. Members of the Team should ensure they can commit to the workload and time requirements.

Step 5: Identify Potential Emergencies
The Team should identify potential sources of danger and rate their probability of occurring. This exercise will help specify which emergencies should be included in the Emergency Plan.

Step 6: Identify Impacts and Resources Needed to Cope
This step involves the Team assessing the impacts for each of the specific events identified in Step 5, and adapting the specific emergency responses to reflect the community's unique situation. This includes putting together an emergency response telephone list and evacuation plan.

Step 7: Consolidate Information into Draft Plan
Assemble a Draft Plan from the information collected in Steps 5 and 6. Distribute copies of the Draft Plan to those within the Board administration affected by the Plan, as well as other levels of government, for review and comments. Revise the Plan to reflect comments offered. Also develop a *quick reference* wall chart.

Step 8: Gain Plan Approval by Chief and Council
Present the revised Plan to a meeting of Chief and Council for approval by motion.

Step 9: Produce Final Plan
Produce copies of the Emergency Plan, contact lists etc.

Step 10: Distribute and Communicate Plan
Determine the distribution list and distribute the Emergency Plan and quick reference resources to all parties. Advise community members, using local publications, posters etc., that the Band has an Emergency Response Plan in place and the name of the Band Emergency Coordinator. Discuss the Emergency Plan at a community meeting.

FOR FURTHER INFORMATION ON EMERGENCY RESPONSE PLANS CALL YOUR REGIONAL RPS FOR INAC OFFICE.

ANNEX D
PRINCIPLES UNDERLYING EFFECTIVE ADULT EDUCATION

Adults learn best when they are involved and participating; consequently, a steady diet of lecture type formats should be avoided and more emphasis placed on small group discussions, case studies, active question and answer periods, etc.;

- adults also like variety, variety in instructors, teaching modes, timing of sessions, etc.;
- adults often bring rich experiences to bear on issues raised in training sessions and sharing these with their fellow participants can make for powerful learning experiences;
- adults want their learning to be relevant to their needs; consequently, it is important to build into the course design ways of checking their expectations to ensure they are being met;
- adults also want to act on their learning; so structuring a period at the end of the course, so that participants can develop their own action plan and make some personal commitments, makes sense;
- adults can be assisted in turning learning into action within an organization by developing an identifiable network of people who have shared the same learning experience; any course or workshop should facilitate communication among participants following the session.

ANNEX E
COMPENDIUM OF TECHNIQUES FOR ENGAGING CITIZENS WHICH MAY BE RELEVANT TO FIRST NATIONS COMMUNITIES

Consultation (traditional)
Consultation is a method traditionally utilized by governments to seek the input of stakeholders on a particular policy issue. It can take many forms including: community meetings, opinion polls, focus groups, meetings with staff, and establishment of advisory committees.

Open Houses
The purpose of the open house is to provide an environment for a free-flowing conversation directed by the visitor. People can come whenever they wish, stay as long or short a time as they wish, speak to whomever they please and address whatever topics of interest in whatever order they choose. As a result, staff talk with a larger number and broader cross-section of the population than they would at the typical public meeting. Moreover, the quality of the exchanges is usually much higher; thus, the open house can provide the setting for clear communication. It requires that the hosts be prepared to answer questions, to explore options and to be open to listen to concerns voiced by the public.

Citizen Juries
These bring together a small number of people, randomly selected from the population, to hear expert "witnesses" on a particular issue, deliberate over a short period of time and issue recommendations to the press and public. Developed by the Jefferson Centre in Minneapolis, Minnesota. http://www.jefferson-center.org

Community Indicator Projects
Members of a community get together and work through a process to formulate indicators of community progress. The indicators are more subtle than 'crime' or 'GDP', and therefore become a tool to use to intervene in public policy. There are many of these projects happening around the world now. To find out more, contact Redefining Progress in San Francisco.
http://www.rprogress.org

Community Issues Groups
Community Issues Groups (CIGs) are a combination of the focus group and citizen jury. The purpose is to capture the energy, reach and cost-effectiveness of a focus group, combined with the potential depth of the jury. CIGs consist of 8-12 people who meet for roughly 2-2.5 hours on several occasions to discuss designated issues in depth. Each meeting is designed to build on discussions of the previous session. Proponents of the method claim that it promotes a valuable interaction based on reason, reflection and revision.

Future Search Conferences

A Future Search Conference is a two-day meeting where participants attempt to create a shared community vision of the future. The process is managed by a steering group of local people representing key sections of the community. They take part in a highly-structured 2 day process in which they review the past and create ideal future scenarios. Practitioners claim that it is designed to empower participants in that it upholds the idea that individuals are experts in their own lives. (There are facilitators present but no other experts.) It is also designed to reach consensus by bringing together key stakeholder groups who are often opposed to each other to find common ground and find solutions. Those taking part are expected to identify points of action and to be responsible for realizing them. http://www.ippr.org.uk

Interactive Panels

A panel is composed of 12 members of the general public meeting roughly three times a year to discuss topics set by the organisers. Several panels, each following the same agenda, are organized simultaneously to provide confidence of the results. Members are recruited by quota sampling to cover a range of demographic characteristics, though there is a regular turnover of membership to bring in new voices. Frequently, they are supplied information beforehand, and are encouraged to discuss the material with friends and family. The purpose is to explore the views and values of the public on the issue at hand. An independent researcher generally facilitates panels. The discussion is recorded and Transcripts, as well as a final report, are produced, providing qualitative and quantitative information on members' views. To date, Interactive Panels have been used mainly by health authorities, although they could be readily established by other agencies to address a wide range of topics. http://www.ippr.org.uk

On-line Discussions

A variety of internet-based communications tools have arisen that facilitate interaction between citizens and groups in disparate locations. These include mailing lists, usenet groups, internet relay chats, electronic conferences and intranets. One of the benefits of this form of communication tends to be a flattening of hierarchies in group relationships. http://www.worldbank.org/devforum

Study Circles

Small group deliberation involving 10-15 people who meet regularly over a period of weeks/months to address policy issues; usually involves a trained facilitator and basic ground rules for discussion. The Study Circles Resource Centre exists as a non-profit organization (established in 1990 in the US) to promote the use of study circles on public policy issues.
http://www.cpn.org/SCRC/

ANNEX F
PWGSC CLIENT SERVICE UNITS FOR INAC

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GOOD PUBLIC WORKS MANAGEMENT IN FIRST NATIONS COMMUNITIES

Public Works and Self-Government

An Introduction for Negotiators

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Public Works and Government Services Canada
Travaux publics et Services gouvernementaux Canada

Canada

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Additional paper copies can be obtained from the
Real Property Services Documentation Centre at this e-mail:
doc.centre@pwgsc.gc.ca.
For more information, please contact Real Property Services for
Indian and Northern Affairs Canada (RPS for INAC) Headquarters by telephone at
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PUBLIC WORKS AND SELF-GOVERNMENT: AN INTRODUCTION FOR NEGOTIATORS

I. INTRODUCTION

A good public works infrastructure is essential to the health, safety and well-being of any community. Unless, a community has a solid basis of well-maintained roads, a good water supply, sound sewage and solid waste disposal and a workable planning system, among other things, improved social well-being and economic expansion will be difficult, if not impossible, to achieve and sustain.

For these reasons, those negotiating self-government - from the federal, provincial and First Nations governments - need to ensure their agreements treat the public works function in a comprehensive and effective manner.

The purpose of this introductory document is to assist them in accomplishing this task. It is organized around the following four questions:

- What is public works?
- What constitutes sound public works?
- Why is regulation central to public works?
- What are the implications for negotiators?

This document also provides related references (see Annex A) and contacts for further information (see Annex B).

II. WHAT IS PUBLIC WORKS?

Scope of Public Works

Public works covers the broad spectrum of activities essential to the smooth running of any community. These activities tend to be controversial only if they are not functioning properly. In that sense, they are often 'taken for granted'.

Included in the term public works are very visible community assets such as government buildings and schools, including their upkeep and maintenance. Further, the term encompasses the roads, bridges and related infrastructure such as street lighting as well as the ability to keep these in good repair and to clear snow in the winter. Providing fire protection, critical in remote communities for house fires and for bush and forest fires, and ensuring energy supplies for heating and electricity in an efficient and environmentally friendly manner are also part of public works, as is work site safety.

Other elements include systems for collecting, treating and disposing of sewage and solid waste, for providing potable water, for developing and maintaining parks and recreation facilities, for wharves, harbours and airstrips, for land management and expropriation and for the development of community plans and zoning by-laws.

Finally, public works might also entail, in some communities, regulating the construction of private buildings through such means as building and fire codes.

Governing and Managing Tasks

Governing is the primary responsibility of political leaders in a community. Managing and operational responsibilities, on the other hand, tend to be the responsibility of First Nations staff. In practice, there is often considerable overlap between these tasks.

Governing responsibilities for public works are many and varied. Among other things, Chief and Council establish the overall direction of the public works function, adopt by-laws and policies to guide staff and members, approve long term capital plans, set yearly budgets, establish the public works organization, ensure clarity in the roles and responsibilities of the principal actors, and ensure that the rest of the First Nations staff provide the necessary financial and administrative support.

Within the parameters established by Council and by other governments, managing responsibilities include:

- *Planning* - because of the long lead times required to build community assets;
- *Designing* - public works facilities are complex and in many cases highly technical;
- *Financing* - community assets are expensive to build and maintain;
- *Constructing* - these challenges vary from play structures in parks to multi-million dollar schools;
- *Maintaining* - all of the physical assets of a community from roads to buildings to potable water systems require constant upkeep and regular maintenance;
- *Regulating* - because many of the public works functions affects health and safety of the community or have the potential for harming the environment, they are often inspected to ensure that the facilities themselves and in some cases their operators are meeting certain standards often set out in a law;
- *Responding to Emergencies* – such emergencies could be spawned by poor water quality, environmental spills, fire, floods etc.

The scope and complexity of public works suggest that negotiators would be wise to develop a separate chapter dedicated to this function.

III. WHAT CONSTITUTES SOUND PUBLIC WORKS?

Governments want their public works function to accomplish several objectives. Principal among these is the delivery of high quality services - such as the provision of potable water and the treatment of sewage, the collection of garbage - at reasonable cost. Other objectives include:

- preserving the health and safety of citizens;
- ensuring fiscal prudence;
- achieving environmental sustainability;
- providing economic development opportunities;

- enhancing cultural expression and pride; and
- strengthening communities through recreation and voluntary communities.

All of these objectives are central to sound governance. Because the goods and services generated as a result of public works activities are tangible - they can frequently be seen, measured and touched - they become an expression of the permanence, competence and vitality of the community.

That said, common to the interests of all negotiators dealing with self-government are four aspects of sound public works: 1) achieving and sustaining high quality services; 2) ensuring health and safety of citizens; 3) achieving environmental sustainability; and 4) ensuring sound fiscal arrangements.

IV. WHY IS REGULATION SO CENTRAL TO SOUND PUBLIC WORKS?

The recent tragedy at Walkerton, a small town in southwestern Ontario, illustrates what can happen if a critical public works function goes badly wrong. In May 2000, a deadly form of E.coli entered the town's drinking water. The contamination was confirmed on May 15. It was six more days before residents were alerted. Six people died and 2300 others became ill. It is hard to imagine any other locally delivered government service having such a catastrophic impact on a community.

The Walkerton tragedy illustrates the central importance of a well functioning regulatory system to achieve the objectives noted above of sound public works. Testimony at the Walkerton inquiry and media reports reveal a long list of problems with the regulatory system: the lack of a legislative base for water standards in Ontario; poorly defined roles and responsibilities; lack of accreditation for testing laboratories; no ongoing accreditation of water plants; water operators who were not certified; equipment breakdowns that were not reported; political leaders who may not have understood their responsibilities; and poor communication with the public. There is no reason to believe that First Nations communities are immune to a similar list of problems and accompanying liabilities.

In addition to the provision of potable water, the treatment of sewage and solid waste, construction and safety-related issues, zoning, fire protection are other examples of where regulation plays a critical role. There are a number of characteristics that are important for a sound regulatory system, including:

- Clear, concise, consistent and measurable regulatory objectives;
- A legislative base;
- Clear roles and responsibilities among the key players, including what to do in an emergency;
- An appropriate balance of promotion, monitoring and enforcement activities;
- A regulator that is set up and organized in a way that limits the ability of other stakeholders from unduly influencing monitoring and enforcement;

- An understanding of the regulated group, including who they are and how they behave. This knowledge will assist in developing effective promotion, monitoring and compliance;
- Regular evaluation for effectiveness, and adjustment from time to time due to intervening factors.

The question is what does all this mean for self-government negotiators?

V. WHAT ARE THE IMPLICATIONS FOR NEGOTIATORS?

Filling the regulatory void

How would First Nations communities under the *Indian Act* fare relative to these characteristics of a sound regulatory system, especially the need for a legislative base? The short answer is not well. Federal law pertaining to public works is sparse and relates mainly to environmental management - for example, the *Fisheries Act* and the *Canadian Environmental Protection Act*. On the other hand, some relevant provincial law may not apply to Indian lands for constitutional reasons. Further, even if some provincial laws do apply, provincial governments have shown reluctance in the past to enforce such laws. Finally, by-law making powers for First Nations under the *Indian Act* are inadequate to deal with the regulatory aspects of public works.

In sum, there is a regulatory void pertaining to many elements of public works on First Nations communities, a void that self-government negotiations can help fill. Here are some questions they may wish to address in thinking about this task:

- For each of the principal components making up public works, what is the nature of the regulatory system now in play for the First Nations communities?
- How do such systems stack up to the characteristics listed above?
- How can the self-government regime under negotiation 'fix' current problems?
- In particular, what roles will each of the governments to the agreement assume?
- Does the First Nations party have the capacity to assume its role and, if not, how can it gain the required capacity and what will happen in the meantime?

The question of roles is especially important. Regulatory systems in Canada, where government itself is an 'operator', generally involve two levels of government: 1) the provincial and sometimes the federal government as the regulator; and 2) the municipal government or some other public body as the operator. In short, long experience, buttressed by the Walkerton tragedy, suggests that governments, like other organizations, have difficulties regulating themselves. If self-government negotiators accept this premise, they appear to have two options in situations where 'operations' will be in the public sector: apply provincial and federal regulatory systems to the First Nations government; or develop a two-tier First Nations government with regulatory and operating roles clearly defined.

To sum up, dealing effectively with the regulatory side of public works could have a major impact on how the self-government regime is structured.

Other Concerns

Getting the regulatory system 'right' for public works will be a significant challenge for negotiators. But there will be other concerns including the following:

- What are appropriate funding principles for public works around which to structure fiscal arrangements between the federal and First Nations governments?
- How will legitimate one-time costs related to implementing the public works function be identified?
- How will O&M funding levels be determined?
- In what condition will public works assets be transferred?
- Who will be responsible for insuring these assets?
- How will major capital funding be determined?
- What are the implications for public works in the Own Source Revenue Agreement?
- What redress mechanisms are required and how will they be structured?
- What ongoing mechanisms will be required to co-ordinate the public works function among governments?
- What aspects of public works need to play a central part of the capacity-building strategy for self-government?

The scope and complexity of public works suggest that negotiators would be wise to develop a separate chapter dedicated to this function.

VI. CONCLUSIONS

Public works is a complex, multi-faceted function essential to the health, safety and overall well-being of any community. Further, it is a challenging area to govern and manage. Aspects of it are highly technical. It affects everyone. Public works investments are costly to fund and maintain. Failures can result in sickness and even death. And because of this it has a complex legal and regulatory side demanding collaboration from players both from and external to the First Nations community.

For these reasons, self government negotiators face significant challenges in crafting agreements on public works, agreements that will be comprehensive, effective and sustainable.

VII. FURTHER INFORMATION

To help negotiators meet these challenges Annex A provides an annotated list of resources and documents. Annex B provides a list of regional RPS for INAC offices that negotiators may contact to receive advice on the public works function.

ANNEX A
OTHER DOCUMENTS OF RELEVANCE TO NEGOTIATORS

THE PUBLIC WORKS FUNCTION

Institute on Governance, The Public Works Function in Canadian Jurisdictions, (RPS for INAC, October 1998)

This paper describes the legal and regulatory relationship between provincial governments and municipalities in Canada in the areas of land use planning, building codes, roads and bridges, parks and recreational facilities, water and sewage systems, and solid waste collection and disposal. Financing options available for selected functions are also examined. Available on the RPS for INAC website, http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, Self-Government Agreements and the Public Works Function, (RPS for INAC, October 1998)

An examination of how public works functions (public buildings, roads, potable water, etc.) are treated in four sets of aboriginal self-government agreements. It includes an analysis of self-government agreements with regard to (a) the similarities and differences with the tiered governance model developed by the Royal Commission On Aboriginal Peoples; and (b) the treatment of the public works function as it relates to the government's Inherent Right Policy. Available on the RPS for INAC website,
http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, Backgrounder: Public Works Function in Self-Government, (RPS for INAC, March, 2000)

A look at public works in First Nations communities, including the existing legal and policy framework, roles and programs, and building capacity. It also explores the issue of public works in the context of self-government. Available on the RPS for INAC website,
http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, Public Works in Small and Rural Municipalities, (RPS for INAC, March 1999)

A synopsis of how various public works are managed in small and rural municipalities across Canada. This paper illustrates various approaches to public works management (chiefly financing, administration, and training), and examines some of the public works trends and challenges faced by small, and often remote communities, including government downloading of responsibilities, growing use of public-private partnerships and user fees, problems of technology transfer, increased citizen expectations in service quality, and limited resources (time

and funding) for staff training. Available on the RPS for INAC website, http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Institute on Governance, A Compendium of Provincial Public Works Statutes, (RPS for INAC, March 1999)

A 'road map' for federal negotiators and Aboriginal counterparts in addressing the scope of public works provisions in self-government agreements. The compendium provides a synopsis of provincial statutes relevant to the following six public works functions: (1) building and safety codes; (2) water and sewage; (3) solid waste; (4) roads and bridges; (5) parks and recreation; and (6) land use planning. Attention is paid to standards and regulations, inspection procedures, appeal or redress mechanisms, and offences and penalties. Available on the RPS for INAC website, http://pwgsc.gc.ca/rps/inac/content/docs_governance-e.html.

Profiles of Successful Public Works Delivery in First Nations Communities, a forthcoming publication of Real Property Services for INAC

CAPACITY BUILDING

Capacity Assessment and Development, Technical Advisory Paper No. 3. Bureau for Development Policy, United Nations Development Program, 1998.
Available on the UNDP website, http://magnet.undp.org/Docs/cap/CAPTECH3.htm.

Schacter, Mark, "Capacity Building": A New Way of Doing Business for Development Assistance Organizations, Policy Brief No. 6, Institute On Governance, 2000.
Available on the Institute On Governance website, http://www.iog.ca/publications.html.

REGULATORY SYSTEMS

A Strategic Approach to Developing Compliance Policies, Parts I and II, Treasury Board of Canada, 1992

Regulation of the Private Provision Public Water-Related Services, CEPIS/OPS-II and Malcolm Sparrow, "The Regulatory Craft", Brookings Institute, (Washington: 2000)

EMERGENCY RESPONSE SYSTEMS

SELF ASSESSMENT TOOL

Neegan-Burnside Ltd., Compendium of Information and Training Resources and Self-Assessment Tool, (RPS for INAC, May 2001)

Intended as a tool for First Nations, this compendium is intended to serve as a source of information for First Nations interested in finding out more about public works. It includes an overview of public works functions, Aboriginal and non-Aboriginal sources of information on related training and certification, and a self-assessment tool to enable First Nations to consider their interests and capacities in taking on a larger role in public works management and delivery.

FUTURE SEARCH CONFERENCE

Weisbord, Marvin and Janoff, Sandra, Future Search: An Action Guide to Finding Common Ground in Organizations and Communities, (Berrett-Koehler, 1995)

ANNEX B
PWGSC CLIENT SERVICE UNITS FOR INAC

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